LAW ASSOCIATION PHILADELPHIA

(14,681.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 196.

THE ÆTNA LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

THE COUNTY OF LYON, IN THE STATE OF IOWA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

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1 UNITED STATES OF AMERICA,
Northern District of Iowa.

Pleas before the circuit court of the United States in and for the northern district of Iowa, western division, at a term begun and holden at Sioux City, in said district, on the first Tuesday of May, 1890, before the Hon. Oliver P. Shiras, judge of said court.

THE ÆTNA LIFE INSURANCE COMPANY, Plaintiff,
vs.
THE COUNTY OF LYON, IN THE STATE OF IOWA, Defendant.

Be it remembered that heretofore, to wit, on the 22d day of February, A. D. 1890, a petition in said cause was filed in the office of the clerk of the United States circuit court in and for the northern district of Iowa; which petition is in the words and figures following, to wit:

In the United States Circuit Court for the Northern District of Iowa, Western Division.

THE ÆTNA LIFE INSURANCE COMPANY, Plaintiff,
vs.
THE COUNTY OF LYON, IN THE STATE OF IOWA, Defendant. } Petition.

Plaintiff states that plaintiff is a corporation created by and organized under the laws of the State of Connecticut and a citizen of the State of Connecticut, and that the defendant is a municipal corporation created by and organized under the laws of the State of Iowa and a citizen of the State of Iowa.

That heretofore, to wit, on or about the 1st day of May, 1885, the defendant, for value received, executed its eighty negotiable bonds in writing, in due form, each for the sum of one thousand dollars, with interest thereon at the rate of six per cent. per annum, payable semi-annually, on the first day of May and November in each year, and for the semi-annual interest on said bonds executed its negotiable interest notes or coupons in writing, in due form.

That one of said coupons is in the following terms, viz:

2 "$30. The treasurer of Lyon county, Iowa, will pay the holder hereof, on the first day of Nov., 1887, at his office, in Rock Rapids, thirty dollars, for interest on county bond No. 062, issued under provisions of chapter 58 of the Session Laws of the Seventeenth General Assembly and chapter 175 of Public Laws of Twnetieth General Assembly of Iowa.

"T. C. THOMPSON,
"*County Auditor.*"

That plaintiff is the holder of four hundred and ten of said coupons, now past due, one being in the terms above set forth and each of the others being for the same amount and being in the same terms, except as to the date of its maturity and the number of the bond referred to.

That the dates of maturity and the amounts of the principal of said four hundred and ten coupons and the number of the bonds referred to are respectively as follows, viz:

Date of maturity: May 1st, 1887.
Numbers of bonds referred to:
0111 to 0120, inclusive.
Ten coupons, amount of principal thereof..... $300 00

Date of maturity: November 1st, 1887.
Numbers of bonds referred to:
028 to 047, inclusive.
056 to 090, inclusive.
096 to 0120, inclusive.
Eighty coupons, amount of principal thereof..... $2,400 00

Date of maturity: May 1st, 1888.
Numbers of bonds referred to:
028 to 047, inclusive.
056 to 090, inclusive.
096 to 0120, inclusive.
Eighty coupons, amount of principal thereof..... $2,400 00

Date of maturity: November 1st, 1888.
Numbers of bonds referred to:
028 to 047, inclusive.
056 to 090, inclusive.
096 to 0120, inclusive.
Eighty coupons, amount of principal thereof..... 2,400 00

Date of maturity: May 1st, 1889.
Numbers of bonds referred to:
028 to 047, inclusive.
056 to 090, inclusive.
096 to 0120, inclusive.
Eighty coupons, amount of principal thereof..... $2,400 00

Date of maturity: November 1st, 1889.
Numbers of bonds referred to:
028 to 047, inclusive.
056 to 090, inclusive.
096 to 0120, inclusive.
Eighty coupons, amount of principal thereof..... $2,400 00

That said four hundred and ten coupons and the interest thereby represented, though duly demanded, are, together with the interest on the amounts thereof from the respective dates of their maturity, as above set forth, wholly unpaid.

Wherefore plaintiff prays judgment against the defendant for the

amount of thirteen thousand four hundred and thirty-four
3 dollars, with interest and costs.

CUMMINS & WRIGHT,
HENDERSON, HURD, DANIELS & KIESEL,
Attorneys for Plaintiff.

CHARLES J. COLE, *Of Counsel.*

STATE OF IOWA, } ss:
County of Polk, }

I, A. B. Cummins, being first duly sworn, on oath say that I am one of the attorneys for plaintiff in this action; that the coupons referred to in the foregoing petition are in my possession, and that so far as relates to the cause of action thereon I believe the statements of the said petition to be true.

A. B. CUMMINS.

Subscribed and sworn to before me, a notary public of said State, in and for said county, this 20th day of February, 1890, as witness my official signature and seal.

[SEAL.] JAS. P. HEWITT,
Notary Public, Polk County, Iowa.

(Endorsed:) No. 140. Law. In U. S. circuit court, western divis-on, northern district of Iowa. The Ætna Life Insurance Company *vs.* The County of Lyons, in the State of Iowa. Petition. Filed February 22, 1890. A. J. Van Duzee, clerk, by J. H. Bolton, deputy. Cummins & Wright, Henderson, Hurd, Daniels & Kiesel, attorneys for plaintiff.

4 And afterwards, to wit, on the 28th day of February, A. D. 1890, there was filed in the office of the clerk of said court in said cause a summons with the return of service endorsed thereon; which summons and return are in the words and figures following, to wit;

UNITED STATES OF AMERICA, } ss:
Northern District of Iowa, Western Division, }

To the marshal of the northern district of Iowa:

In the name of the President of the United States, you are hereby commanded to summon the County of Lyon, in the State of Iowa, a citizen of the State of Iowa, to appear before the honorable circuit court of the United States in and for the northern district of Iowa on the first day of the next term thereof, to be begun and holden at the city of Sioux City, on the first Tuesday of May next, it being the 6th day of May, A. D. 1890, then and there to answer unto the Ætna Life Insurance Company of Connecticut, a citizen of the State of Connecticut, in a plea of damages, to the damage of said plaintiff in the sum of $13,434.00.

Hereof fail not, and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the [SEAL.] city of Sioux City, this the 22nd day of February, A. D. 1890, and of the Independence of the United States the 114th.

A. J. VAN DUZEE,
Clerk U. S. C. C., Northern Dist. of Iowa,
By J. H. BOLTON, *Deputy.*

This writ came into my hands for service on the 22nd day of February, A. D. 1890, and I served the same on the within-named The County of Lyon on the 26th day of February, 1890, by reading the same to H. G. McMillen, county attorney of the county of Lyon, by delivering to him a true copy, at Rock Rapids, in the county of Lyon and State of Iowa.

EDWARD KNOTT,
U. S. Marshal.
W. C. DAVENPORT, *Deputy.*

Marshal's Fees.

Mileage, 83 miles	$4 98
Service on 1	2 00
Copy	1 00
	$7 98

Received pay.,

W. C. DAVENPORT,
Deputy U. S. Marshal.

(Endorsed:) No. 140. Summons. Circuit court of the United States, northern district of Iowa. The Ætna Life Insurance Company *vs.* The County of Lyon. Filed 28th day of February, 1890. A. J. Van Duzee, clerk, by J. H. Bolton, deputy. Cummins & Wright, attorneys for plaintiff; residence, Des Moines, Iowa.

5 And afterwards, to wit, on the 6th day of May, A. D. 1890, there was filed in the office of the clerk of the said court in said cause an answer; which answer is in the words and figures following, to wit:

In the United States Circuit Court in and for the Northern District of Iowa, Western Division.

THE ÆTNA LIFE INSURANCE COMPANY
vs.
THE COUNTY OF LYON, IN THE STATE OF IOWA. } Answer.

The answer of the defendant, The County of Lyon, to the petition of plaintiff herein respectfully shows the court as follows, to wit:

First. The defendant admits that it is a municipal corporation created by and organized under the laws of the State of Iowa. It admits that on or about the 1st day of May, 1885, certain persons, assuming and claiming to be officers of Lyon county, signed certain instruments purporting to be bonds of the defendant county, not only eighty in number, but one hundred and twenty, the said pretended bonds being in writing and purporting to be the obligations of *the* Lyon county, for the sum of one thousand dollars each, with interest at six per cent. per annum, payable semi-annually, on the first days of May and November in each year; but this defendant denies that said obligations were valid obligations of the defendant county because of the matters and things hereinafter set out.

And this defendant further denies that any of the said pretended coupons set out or referred to in plaintiff's petition were ever signed or executed by any person, and this defendant denies that the signature- to said coupons are the genuine signatures of any person even claiming to be an officer of the defendant county at that time.

And this defendant, further answering, avers that at the time said one hundred and twenty bonds were signed by the persons purporting to be the chairman of said board of supervisors and auditor of Lyon county, the said persons had no authority whatever to execute said obligations, nor had the defendant county any power to authorize said persons to execute such instruments, nor could the defendant lawfully execute such instruments.

That by the last proceeding State and county tax-lists the total value of the taxable property of Lyon county, both real and personal, was one million four hundred and thirty-seven thousand five hundred and twenty-seven dollars ($1,437,527), that being the amount of the State and county tax-lists for the year 1884, being the last State and county tax-lists previous to the date on which the said pretended obligations purport to have been issued, and that the amount of said tax-lists for all years prior thereto was much less that that amount.

That under the constitution of Iowa said county, being a municipal corporation, could not then or at any time prior thereto incur an indebtedness in excess of seventy-one thousand eight hundred and seventy-six dollars ($71,876), and that prior thereto the amount of debt that might be incurred was much less that that sum.

That in fact prior to the date upon which said pretended
6 obligations referred to in plaintiff's petition purport to have been issued the defendant had already incurred indebtedness to the full amount of five per cent. (5 %) upon the assessed value of its said property, as shown and ascertained in the manner provided in the constitution, and in fact had outstanding at that time other pretended obligations largely in excess of that amount. Wherefore the defendant county could not in any manner increase its indebtedness at that date, and the said one hundred and twenty bonds purporting to be the obligations of the county of Lyon, eighty of which are referred to in plaintiff's petition, were and are totally and

absolutely null and void and are not and were not the valid obligations of the county of Lyon.

Second. This defendant, further answering, shows that on the twelfth day of *May*, 1887, George J. Anderson, R. G. Sauer, S. L. Fairlamb, P. M. Cassady, *et al.*, citizens and tax-payers of Lyon county, Iowa, filed their petition in equity in the district court of the State of Iowa in and for Lyon county against George W. Bowers, county treasurer of Lyon county; T. C. Thompson, as county auditor of Lyon county, and George J. Anderson *et al.*, constituting the board of supervisors of defendant county, alleging that the said pretended obligations referred to in plaintiff's petition, including the coupons sued on, were issued without authority of law and in contravention of the laws and the constitution of the State; that the board of supervisors of the defendant county were threatening to and would, unless restrained by the court, levy taxes upon all the taxable property within the said county to pay the interest accruing upon the said pretended and unlawful obligations; that the plaintiff- were holders of large amounts of property within said county and would be subjected to such levies and taxes; that the said bonds and obligations, being wholly illegal and in violation of the Constitution, did not constitute valid obligations against the said county, and that to impose such taxes upon the plaintiff's property and the property of other tax-payers of said county would cloud the title of their property and result in a multiplicity of suits, which a court of equity should prevent, and asking that a writ of injunction issue to restrain the defendants fro*j* recognizing in any way the said obligations as valid obligations of the county and from levying any taxes to pay the same or any portion thereof or interest thereon.

That by an amendment of the said petition filed on the tenth day of June, 1889, the plaintiff herein, The Ætna Life Insurance Company, was made a party defendant to said suit and was personally served with notices of the pend*a*ncy thereof on the — day of July, 1889; that by said amendment to the petition it was averred that the plaintiff was a holder of a portion of said bonds and was claiming the right to enforce the same against the defendant and was insisting upon levies being made to pay the interest thereon and to provide for the payment of the principal of said bonds and coupons, being those referred to in plaintiff's petition herein.

That the plaintiff herein, defendant as aforesaid in said suit, failed to appear in said cause, and thereupon, to wit, on the fifth day of March, 1890, the said cause came on for trial as against the said plaintiff and others, defendants in the said suit, and thereupon a decree was rendered therein, a copy of which is hereto attached and made a part hereof, marked Exhibit "A."

Wherefore, by reason of the premises, it has been adjudged and decreed in the proceedings to which this plaintiff was a party and to which this defendant was a party, by and through it- offi-
7 cers aforesaid, that the pretended *n*onds and coupons in suit herein were not valid obligations of the defendant, but were wholly illegal, null, and void, and were not the obligations of the defendant county.

Wherefore, it having been so adjudged, the plaintiff cannot recover in this suit. Defendant asks judgment against plaintiff for costs.

H. G. McMILLAN,
County Att'y, and
A. VAN WAGENEN,
KAUFFMAN & GUERNSEY,
Attorneys for Defendant.

UNITED STATES OF AMERICA,
Eighth Circuit, Northern District of Iowa.

I, A. Van Wag*rurn*, on oath say I have read the foregoing answer for the county. I am one of the attorneys for defendant Lyon county. I have personal knowledge of all the allegations therein. I have better knowledge thereof than the defendant or any of the officers thereof, and all the allegations therein are true as I verily believe.

A. VAN WAGENEN.

Subscribed and sworn to before me by A. Van Wagenen this 6th day of May, 1890.

[SEAL.] J. H. BOLTON, *Deputy.*

EXHIBIT "A."

Certified Copy of Decree.

In the District Court of Iowa in and for Lyon County.

GEORGE J. ANDERSON, S. L. FAIRLAMB, *et al.* *vs.* GEORGE W. BOWERS *et al.* } Certified Copy of Decree.

Be it remembered that on the 5th day of March, 1890, the above-entitled cause came on for final hearing and judgment, and decree was entered in the record of said cause in pages 511 to 518, inclusive; which decree is in words and figures as follows, to wit:

In the District Court of Iowa in and for Lyon County.

GEORGE J. ANDERSON, R. G. SAUER, S. L. FAIRLAMB, P. M. Cassady, and D. H. Shannon, Each for Himself and for the Benefit and Use of the Tax-payers of Lyon County, Iowa,

against

GEORGE W. BOWERS, as Treasurer of Lyon County; T. C. Thompson, as County Auditor of Lyon County; George J. Anderson, Hans J. Olson, A. L. Parsons, C. W. Bowen, and H. B. Pierce, as Members of the Board of Supervisors of Lyon County; The Ashuelot National Bank of Keene, N. H.; The First National Bank of St. Paul, Minn.; The Keene Five Cent Savings Bank of Keene, N. H.; The Saving & Trust Company of Cleveland, Ohio; The Ætna Life Insurance Company of Hartford, Conn.; The Dubuque National Bank of Dubuque, Iowa; Orient Fire Ins. Company of Hartford, Conn.; The Conn. General Life Ins. Company; The Hartford Steam Boilers' and Inspectors' Ins. Company of Hartford, Conn.; Charles E. Judd, of Canton, Dakota; C. H. Eighmey, of Dubuque, and Eliza Faulkner, of Keene, New Hampshire, *et al.*

No. 349. Decree.

Now, on this 5th day of March, A. D. 1890, the same being the third day of the regular March term of the district court of
8 Iowa in and for Lyon county, duly and legally held at the court-house, in Rock Rapids, in said county, this cause coming up for final hearing, the following proceedings were had, to wit:

The cause being called for trial on its merits, the court examines the records and the original notices in this cause and finds the same are in due form of law and are sufficient in every respect, and fully and completely notified the defendants of the nature of the cause, the relief demanded, and all the facts and allegations of the petition, and the court finds that the original notice in form and substance as above states was duly and legally served personally upon the defendant The Ætna Life Insurance Company of Hartford, Conn., by the sheriff of Hartford county, Connecticut, reading the said notice to J. L. Euglish, and officer of said corporation, he being at said time secretary thereof, and by delivering to him, the said J. L. English, a true copy thereof, all done at Hartford, in the county of Hartford, in the State of Connecticut, on the 24th day of July, 1889; and upon the defendant The First National Bank of St. Paul, in the State of Minnesota, by the sheriff of Ramsey county, in the State of Minnesota, reading the said notice to Henry P. Upman, an officer of said corporation, he being at the said time president thereof, and by delivering to him, the said Henry P. Upman,

a true copy thereof, all done at St. Paul, in the county of Ramsey, in the State of Minnesota, on the 22nd day of July, 1889; and said notice in form and substance as above stated was duly and legally served personally upon the defendant The Connecticut General Life Insurance Company of Hartford, Conn., by the sheriff of Hartford county, in the State of Connecticut, reading the said notice to F. V. Hudson, an officer of said corporation, he being at said time secretary thereof, and by delivering to him, the said F. V. Hudson, a true copy thereof, all done at the city of Hartford, in the county of Hartford, in the State of Conn., on the 24th day of July, 1889; and the said original notice in form and substance as above stated was duly and legally served personally upon the defendant The Hartford Steam Boilers' and Inspectors' Insurance Company of Hartford, Connecticut, by the sheriff of the county of Hartford, in the State of Connecticut, reading the said notice to J. M. Allen, an officer of said corporation, he being at said time president thereof, and by delivering to him, the said J. M. Allen, a true copy thereof, all done in the city of Hartford, in the county of Hartford, in the State of Connecticut, on the 24th day of July, 1889; and the said original notice in form and substance as above stated was duly and legally served personally on the defendant Ashuelot National Bank of Keene, New Hampshire, by the sheriff of Cheshire county, in the State of New Hampshire, reading the said notice to O. Coolidge, an officer of said corporation, he being at the said time cashier thereof, and by delivering to him, the said O. Coolidge, a true copy thereof, all done at Keene, in the county of Cheshire, in the State of New Hampshire, on the 25th day of July, 1889; and the said original notice in form and substance as aforesaid was duly and legally served personally upon the defendant The Keene Five-cent Savings Bank of Keene, New Hampshire, by the sheriff of Cheshire county, in the State of New Hampshire, offering to read said notice to Stephen L. Randolph, an officer of said corporation, he being at said time cashier thereof and who waived the reading of said notice, and by delivering to him, the said Stephen L. Randolph, a true copy thereof, all done at the city of Keene, in the county of Cheshire, in the State of New Hampshire, on the 25th day of July, 1889; and the said original notice in form and substance as aforesaid was duly and legally served personally upon the defendant Eliza Faulkner by the sheriff of Cheshire county offering to read said notice to said Eliza Faulkner, and she waived said reading, and by then and
9 their delivering to said Eliza Faulkner a true and correct copy of said original notice, all done at the city of Keene, in the county of Cheshire, in the State of New Hampshire, on the 25th day of July, 1889; and said original notice in form and substance as above stated was duly and legally served personally on the defendant Savings & Trust Company of Cleveland, Ohio, by the sheriff of Cuyahoga county, by reading the said notice to H. R. Newcomb, an officer of said corporation, he being at the time secretary and treasurer thereof, and by delivering to him, the said H. R. Newcomb, a true copy thereof, all done at Cleveland, in the county of Cuyahoga, in the State of Ohio, on the 20th day of

July, 1889; and said original notice in form and substance as aforesaid was duly and legally served personally on the defendant E. F. Drake by the sheriff of Ramsey county, Minnesota, reading the same to him and by then and there delivering to said E. F. Drake a true and correct copy of said original notice, all done at the city of St. Paul, in the county of Ramsey, in the State of Minnesota, on the 22ne day of July, 1889; and the said original notice in form and substance as above stated was duly and legally served personally on the defendant C. H. Eighmy, of Dubuque, Iowa, by the sheriff of Dubuque county, Iowa, reading to him the same and by then and there delivering to the said E. H. Eighmey, of Dubuque, Iowa, a true and correct copy of the original notice, all done at the city of Dubuque, in the State of Iowa, on the 22nd day of July, 1889.

And the court finds that each of the above-named defendants thus served were summoned and required to appear at the October term of this district court of Iowa in and for Lyon county on or before noon of the second day of said term, which commenced at the court-house, Rock Rapids, in the county of Lyon, on the 14th day of October, 1889, and the court finds that the officers who made service of aforesaid original notice on the defendants as aforesaid made said service in every particular as required by law and made full and complete return of the same service in writing, duly verified and certified in every respect, as required by law, and showing complete and legal service on defendants as aforesaid, and said original notices, with each and every return of sercice as aforesaid, are now on file in the office of the clerk of the district court and have been examined by the court and found as aforesaid.

The court further finds that none of the above defendants resides as far as nineteen hindred miles from the place where said court was held, in Lyon county, Iowa, at the October term, 1889, and the court finds that each and every defendant served with aforesaid original notices and in the manner aforesaid was served at a place not more that nineteen hundred miles distance from the court-house in Rock Rapids, in Lyon county aforesaid, which is the place where said October term of court for the year 1889 and all terms since have been held; so the court finds t-at the said defendants were duly served more than seventy-two days before said October term of the district court of Iowa in and for Lyon county, Iowa, and were duly required to appear on or before noon of the second day of the term; and court further finds that none of said defendants served as aforesaid appeared at said time or at any time since and have not appeared by attorney or agent or in any manner either at that time or since.

The court further finds that at the December term of this district court of Iowa in and for Lyon county the plaintiffs appeared, by their attorneys, A. Van Wagenen and Kauffman & Guernsey, and the said defendants, although served with original notice in form and manner aforesaid and being called to appear at said December term of said district court began and holden at Rock Rapids, Iowa, on December 10th, 1889, the said defendant*a*, The Ætna Life In-

surance Company of Hartford, Connecticut; The First National Bank of St. Paul, Minnesota; The Connecticut General Life Insurance Company of Hartford, Connecticut; The Hartford Steam Boilers' and Inspectors' Insurance Company of Hartford, Connecticut; The Ashuelot National Bank of Keene, New Hampshire; The Keene Five Cent Savings Bank of Keene, New Hampshire; The Savings and Trust Company of Cleveland, Ohio, and Eliza Faulkner, each and every one, were adjudged to be in default, and said default was then and there entered in the records of said court for want of either an appearance or answer, which record entry was made as to each and every one of the above-named defendants; and now, to wit, on this 5th day of March, 1890, the court finds that each and every one of said defendants are still in default for want of appearance and answer, and, the cause coming on for hearing on its merits, the plaintiffs appear, by their attorney-, A. VanWagenen and Kauffman — Guernsey, and defendants, Hans J. Olson, J. C. Sheneberger, Jesse W. Monk, J. J. Chraft, James Langan, all members of the board of supervisors of Lyon county, Iowa, and A. M. Ringheim, auditor of Lyon county, Iowa, appear, by H. G. McMillan, county attorney, and the court, having carefully examined the pleadings and exhibits and having heard all the testimony and arguments of counsel and being fully advised in the premises, finds the equities to be with the plaintiffs, and finds that each and every one of said defendants are still in default for want of appearance and answer, and, the cause coming on for hearing on its merits, the plaintiffs appeared, by their attorneys, A. VanWagenen and Kauffman and Gernsey, and defendants appeared not, but made default. All the allegations of the plaintiffs' petition are true. The court finds there are outstanding against the county of Lyon the following bonds: One hundred and twenty bonds, numbered 01 to 0120, inclusive, of the amount of one thousand dollars each—one bond for five hundred dollars, number —, bearing date January 4, 1878; one bond for one thousand dollars, number 22, dated May 12, 1880; eleven bonds bearing date January 1, 1880, and amounting to, in the aggregate, $4,300.00, same being numbers 27 to 32 and 34 to 38, inclusive, the last three being for one hundred dollars each and the other eight for five hundred each; eight bonds dated November 12, 1880, numbers 39 to 46, inclusive, and amounting to, in the aggregate, $2,400.00; numbers 42, 43, 45, and 46, being for one hundred dollars each, and the other four being for five hundred dollars each; four bonds issued September 6, 1881, and numbered from 47 to 50, inclusive, each for $1,000; 20 bonds bearing date January 13, 1882, and numbering from 1 to 20, inclusive, the first ten for $100.00 each, the next four for $1,000.00 each, the next four for $500.00 each, and the last two for $1,000.00 each; 7 bonds numbered from 21 to 27, inclusive, dated September 1, 1884, for $500.00 each, except number 26, which is for $100; 7 bonds bearing date of March 1, 1885, and numbered from 28 to 34, inclusive, and amounting in the aggregate to four thousand one hundred and no-100 ($4,100) dollars.

The court finds that the above-named defendants, The Ætna Life

Insurance Company of Hartford, Connecticut; The Ashuelet National Bank of Keene, New Hampshire; The Keene Five-cent Savings Bank of Keene, New Hampshire; The Hartford Steam Boilers' and Inspectors' Insurance Company of Hartford, Connecticut; The Connecticut General Life Insurance Company of Hartford, Connecticut; The First National Bank of St. Paul, Minnesota; The Savings & Trust Company of Cleveland, Ohio, and Eliza Faulkner, of Keene, New Hampshire, are owners of all said bonds. The court further finds that at the time of issuing each and all of said bonds the county was indebted on other bonds outstanding largely in excess of the constitutional limit of indebtedness, to wit, in excess of 5 per cent. of the assessed value of the property, real and personal, situated in the said county of Lyon, as shown by the last State and county tax-list, prior to incurring said indebtedness by issuing said bonds. The court finds that each and every one of said bonds were issued in violation of the constitution and
11 in excess of *of* the constitutional limit of indebtedness, and are therefore null and void. The court further finds that said bonds, each -nd every one, were issued w9thout consideration and were fraudulently issued, and are therefore null and void. The court finds that the holders of said bonds will bring a multiplicity of suits on said bonds and annoy and damage the plaintiffs and other tax-payers by expensive litigation if not restrained from so doing. The court finds that the aforesaid obligations of the county are a cloud upon the title to the lands of the plaintiffs and other tax-payers, in that the enormous debt deters people from coming to locate in the county and prevents many purchasers from buying land in Lyon county, in view of the heavy taxes which will be required to liquidate said bonds, if ever paid, and the court finds that land in said county sells for less than its real value on account of said bonds being held by the defendants against the county of Lyon. The court find*w* that plaintiffs are residents and tax-payers of Lyon county, Iowa. The court finds that the county of Lyon and its officers had no power or authority to issue, execute, make, or deliver any of said bonds, and that each and every one of said bonds are issued in violation of law; and it is therefore ordered, adjudged, and decreed that said bonds are n-ll and void, and that they be, and are hereby, cancelled and held for nothing, and said defendants, owners of said bonds, are hereby ordered to bring the same into court to be destroyed, and the defendants, officers of Lyon county, Iowa, to wit, Hans J. Olson, J. J. Craft, James Langan, J. C. Shenneberger, and Jesse W. Monk, members of said board of supervisors, and A. M. Ringheim, auditor of Lyon county, and their successors in office for all time, are hereby enjoined from levying any taxes for the payment of said bonds or any part of said bonds or any princip*le* or interest due or to become due on said bonds, and are further enjoined from paying or ordering to be paid any of the princip*le* or interest of said bonds or any part thereof, and said officers are enjoined from refunding said bonds or in any manner recognizing or regarding them as valid obligations, either in whole

or in part, against the county of Lyon, and that plaintiffs pay the costs of this action.

Read, approved, and signed in open court March 15, 1890.

GEO. W. WAKEFIELD, *Judge.*

The above and foregoing is a true and correct copy of the judgment and decree in said cause as the same appears in the records of the district court, of which records I am the custodian.

In testimony whereof I hereunto set my hand and official seal of the said district court of Iowa this 28th day of April, 1890.

[SEAL.] H. W. NICHOLS,
Clerk of the District Court of Iowa in and for Lyon County.

(Endorsed:) In the circuit court of the United States, northern district of Iowa, western division. Ætna Life Insurance Company *vs.* The County of Lyon, in State of Iowa. 140. Law. Answer. Filed May 6th, 1890. A. J. Van Duzee, clerk, by J. H. Bolton, deputy.

12 And afterwards, to wit, on the 20th day of September, A. D. 1890, there was filed in the office of the clerk of said court in said cause an amendment to petition; which amendment to petition is in words and figures following, to wit:

In the United States Circuit Court for the Northern District of Iowa, Eastern Division.

ÆTNA LIFE INSURANCE COMPANY, Plaintiff,
vs.
THE COUNTY OF LYON, IN THE STATE OF IOWA, Defendant.
} Amendment to Petition.

Plaintiff, be leave of court, amends its petition herein and says that the bonds mentioned in the said petition were issued for the purpose of refunding other bonds of the defendant theretofore issued, and further says that the said bonds mentioned in said petition or the proceeds thereof were actually used for said purpose.

CUMMINS & WRIGHT,
HENDERSON, HURD, DANIELS & KIESEL, *Attorneys for Plaintiff.*

CHARLES J. COLE, *Of Counsel.*

STATE OF IOWA, }
County of Dubuque, } *ss:*

I, Francis B. Daniels, being first duly sworn, on oath do say that the minute book of the board of supervisors of defendant sets forth at length what purports to be the resolution under which the bonds mentioned in the petition herein were issued and a copy of the reports of the financial agent of said defendant regarding the disposition of said bonds and their proceeds, and that I have personally

examined the same, and the same set forth, as I believe, all the facts alleged in the foregoing amendment; that I believe the statements of said amendment to be true.

FRANCIS B. DANIELS.

Subscribed and sworn to before me, a notary public of said State in and for said county, this 17th day of September, A. D. 1890, and witness my signature and seal of office.

GLENN BROWN,
Notary Public.

[SEAL.]

(Endorsed:) Ætna Life Ins. Co. *vs.* County of Lyon. Amendment to petition. Rec'd copy September 18th, 1890, and object to its being filed as immaterial. Kauffman & Guerusey, attorneys for defendant. Filed September 20, 1890. A. J. Van Duzee, clerk. J. H. Bolton, deputy.

13 And afterwards, to wit, on the 9th day of October, A. D. 1890, there was filed in the office of the clerk of said court in said cause an amendment to answer; which amendment to answer is in words and figures following, to wit:

In the United States Circuit Court in and for the State of Iowa, Northern District, Western Division.

THE ÆTNA LIFE INSURANCE COMPANY *vs.* THE COUNTY OF LYON, IN THE STATE OF IOWA. } Amendment to Answer.

The defendant, for amendment to its answer herein, alleges, in addition to the averments of its second count thereof, that there were also made parties to and entered suit, among others, and personally served with notice the following-named corporations, defendants, to wit:

The Connecticut General Life Insurance Company of Hartford, Connecticut; The Hartford Steam Boilers' and Inspectors' Insurance Company of Hartford, Connecticut; The Saving & Trust Company of Cleveland, Ohio; The Orient Fire Insurance Company of Hartford, Connecticut, and The United States Bank of Hartford, Connecticut.

That final judgment and decree was entered as against all of said corporations *that* the same time and in the same manner and form as against said plaintiff herein, except as against the Orient Fire Insurance Company, which said last-named company duly appeared in said action and filed answer, and the said cause is now pending and undisposed of as against said Orient Fire Insurance Company in the district court of Lyon county in and for the State of Iowa.

That each of said companies then held and owned and now hold and own various of the bonds from which the coupons in suit herein were detached, and still own the said coupons detached therefrom.

Wherefor it hath been adjudged in said proceedings that said bonds and coupond are and were illegal, null, and void, and not the valid obligations of the defendant county, except as to the Orient Fire Insurance Company, as to which company said suit is now pending, and this suit cannot, pending that action, be maintained on the coupons detached from bonds 096 to 0105, being the bonds and coupons owned by said last-named company, and this should be abated as to said coupons.

2. Further answering the amendment to petition filed herein, and not waiving any objection as to the immateriality of the same in this suit at law, this defendant denies every allegation therein contained.

3. For further answer to said amendment to petition, defendant alleges that if it be true that the bonds from which the coupons in suit were taken were refunding bonds, as therein alleged, it is likewise true and this defendant avers that the alleged bonds designed to be refunded thereby were themselves wholly null and void and not the binding obligations of defendant, they being also issued in violation of that provision of the constitution of the State of Iowa more particularly set forth in the original answer herein, and in excess of the constitutional limit of indebtedness, and in excess of five per cent. of the last State and county tax-lists preceding their issue, absolutely null and void.

VAN WAGENEN & McMILLEN &
KAUFFMAN & GEURNSEY,
For Def't.

14 (Endorsed:) In U. S. circuit court, northern district of Iowa, western division. Ætna Life Insurance Company *vs.* The County of Lyon, Iowa. Amendment to answer. Filed October 9th, 1890. A. J. Van Duzee, clerk. J. H. Bolton, deputy. Van Wagenen & McM., K. & G., for defendant.

And afterwards, to wit, on the 9th day of Oc-ober, A. D. 1890, there was filed in the office of the clerk of said court in said cause a motion to strike out paragraph of the amendment to answer; which motion is in the words and figures following, to wit:

In the Circuit Court of the United States, Northern District of Iowa, Western Division.

ÆTNA LIFE INSURANCE COMPANY
vs.
LYON COUNTY. } Motion.

Comes now the plaintiff and moves to strike out paragraph or count of the amendment to defendant's answer filed October 9th, 1890, for the reason that said amendment to the answer is not material.

HENDERSON, HURD, DANIELS & KIESEL,
CUMMINS & WRIGHT, *Att'ys for Plaintiff.*

(Endorsed:) 140. Law. U. S. cir. court, northern district of Iowa. Ætna Life Insurance Company *vs.* County of Lyon. Motion. Filed Oct. 9, 1890. A. J. Van Duzee, clerk. J. H. Bolton, deputy. Henderson, Hurd, Daniels & Kiesel, Cummins & Wright, for plaintiff.

And afterwards, to wit, on the 10th day of October, A. D. 1890, there was filed in the office of the clerk of said court in said cause a reply, demurrer to amendment to answer, & demurrer to answer and demurrer to reply; which reply and demurrers are in the words and figures following, to wit:

In the Circuit Court of the United States, Northern District of Iowa, Western Division.

ÆTNA LIFE INSURANCE COMPANY *vs.* THE COUNTY OF LYON. } Reply.

Comes now the plaintiff, and, for reply to the first count or paragraph of defendant's answer, alleges—

That in the year 1872 the defendant county began to issue its bonds to pay judgments recovered against it and for other purposes, and prior to July 1st, 1879, had authorized and put out about thirty distinct issues of bonds; that on or about July 1st, 1879, the defendant authorized and thereafter and during said year issued one hundred thousand dollars of refunding bonds for the purpose of taking up and paying one hundred thousand dollars of then outstanding bonds; that the proceeds of said refunding bonds were applied to the payment of bonds previously issued, including all the bonds theretofore issued, to pay or fund indebtedness that had been reduced to judgment against defendant; that thereafter and prior to January 1st, 1884, other bonds of the defendant were issued and negotiated; that on the 11th day of April, 1884, the defend-
15 ant authorized the issuance of another series of refunding bonds to take up and pay the bonds outstanding on the 1st day of January, 1884, including the said bonds dated July 1st, 1879, and on the 1st day of May, 1885, in pursuance of the law and said resolution issued and delivered to its refunding agent said series of refunding bonds, numbered 01 to 0120, inclusive, which were by said agent sold and negotiated during the year 1885, and from a portion of which bonds the coupons in suit were detached; that the defendant prior to the issuance of said last-mentioned bonds found and determined that the outstanding bonds to be taken up and paid by said issue of 1885, May 1st, were valid and legal obligations against it, and that indebtedness represented by them was created and they were issued and sold under such circumstances and conditions as to make them enforceable demands against it, the said county, and said finding and determination was represented to each of the purchasers of said bonds in the recitals contained therein; that the refunding agent authorized to sell and negotiate the said

bonds represented to each of the purchasers thereof that they were valid and binding upon the defendant county and were issued to refund bonds which represented an indebtedness which had been reduced to judgment against said county; that each of said purchasers believed and relied upon said statements and representations and became the owner of said bonds upon the faith thereof; that the proceeds of said bonds dated May 1st, 1885, were applied to the payment of said bonds dated July 1st, 1879, and other bonds that had been issued prior to January 1st, 1884.

Wherefore the defendant is now estopped from setting up, claiming, or pleading that the said bonds from which the coupons in suit were detached are not the valid obligations of the said county.

HENDERSON, HURD, DANIELS & KIESEL,
CUMMINS & WRIGHT, *For Defendant.*

(Endorsed:) U. S. cir. court. Ætna Life Insurance Company *vs.* Lyon County. Reply. Filed Oct. 10, 1890. A. J. Van Duzee, clerk. J. H. Bolton, deputy. H., H., D. & K., C. & W.

In the Circuit Court of the United States, Northern District of Iowa, Western Division.

ÆTNA LIFE INSURANCE COMPANY
vs.
LYON COUNTY. } Demurrer.

Comes now the plaintiff and demurs to so much of count *as* paragraph one of the amendment to answer filed herein Oct. 9, 1890, as pleads an action pending in the district court of Iowa in and for Lyon county against the Orient Fire Insurance Company, and for cause of said demurrer shows that said pretended action does not affect the right of the plaintiff to recover upon the coupons transferred by said Orient Fire Insurance Company to it.

HENDERSON, HURD, DANIELS & KIESEL,
CUMMINS & WRIGHT, *For Def't.*

(Endorsed:) U. S. cir. court. Ætna Life Insurance Company *vs.* Lyon County. Demurrer. Filed October 10, 1890. A. J. Van Duzee, clerk. J. H. Bolton, deputy. H., H., D. & K., C. & W.

16 In the Circuit Court of the United States, Northern District of Iowa, Western Division.

ÆTNA LIFE INSURANCE COMPANY
vs.
THE COUNTY OF LYON. } Demurrer.

Comes now the plaintiff and demurrs to the second count or paragraph of defendant's answer, filed May 6th, 1890, to count one or

paragraph of the amendment to the answer filed October 9th, 1890, except so much thereof as pleads an action pending against the Orient Fire Insurance Company, and for cause of such demurrer shows that it is not alleged that either of the corporations therein named appeared in said pretended action in Lyon county, and it does appear that whatever notice was served upon either of said corporations of the bringing or pending of said pretended action was served in a State other than the State of Iowa, by reason whereof the court entering said pretended decree had no jurisdiction of either of said corporations, and the pretended decree is as to them wholly void and of no effect.

HENDERSON, HURD, DANIELS & KIESEL,
CUMMINS & WRIGHT, *For Pl'f.*

(Endorsed:) U. S. circuit court. 140. Law. Ætna Life Insurance Co. *vs.* Lyon County. Demurrer. Filed October 10, 1890. A. J. Van Duzee, clerk. J. H. Bolton, deputy. H., H., D. & K., & C. & W.

United States Circuit Court of the Northern District of Iowa, Western Division.

ÆTNA LIFE INSURANCE COMPANY
vs.
THE COUNTY OF LYON, STATE OF IOWA. } Demurrer to Reply.

Def't demurrers to the reply filed herein for the following reasons, to wit:

1. The matters plead in said reply do not constitute an estoppal as against def't as against its plea of inability under the constitution of the State of Iowa to create a valid debt in excess of said constitutional prohibition.

2. The defendant being powerless to create a debt in excess of 5% of the assessed — of its property as shown by the State and county tax-lists, no estoppal can arise against it because of or on account of the matters plead in said reply.

3. Said reply concedes that a portion of each of the issues of bonds, to wit, those of 1879, of $100,000, and those of 1885, of $120,000, were for indebtedness not reduced to judgment and void; therefore recovery cannot be had upon any part of such issues or either of them in this suit at law.

4. Said reply contains matters wholly irrelevant to this suit and whi-h cannot be investigated herein and tenders issues not triable in a court of law.

5. Whether any portion of the bonds issued in 1873 and 1872 were issued upon judgments is wholly immaterial to this suit.

6. If the matters in said reply are material or competent,
17 defendant is enti-led to plead further thereto, but by the laws and practice of the State of Iowa in respect to pleadings in force in this court no further pleading save a demurrer to a reply

is permissable, and therefore said matters cannot be plead by way of reply.

A. VAN WAGENEN &
H. G. McMILLAN &
KAUFFMAN & GUERNSEY,
Att'ys for Defendant.

(Endorsed:) In the U. S. cir. court, northern district of Iowa, western division. The Ætna Life Insurance Company -*s.* County of Lyon. Demurrer to reply. Filed Oct. 10, 1890. A. J. Van Duzee, clerk. J. H. Bolton, deputy. V. & M. & K. & G., for def't.

And afterwards, to wit, on the 11th day of October, 1890, there was filed in the office of the clerk of said court in said cause a stipulation waiving jury; which stipulation is in the words and figures following, to wit:

In the Circuit Court of the United States, Northern District of Iowa.

ÆTNA LIFE INSURANCE COMPANY
vs.
THE COUNTY OF LYON.

It is stipulated at the close of the testimony that the jury impanelled be discharged, a trial by jury being waived, and the cause submitted to the court.

CUMMINS & WRIGHT &
HENDERSON, HURD, DANIELS & KIESEL.
A. VAN WAGENEN &
H. G. McMILLAN,
GUERSNEY & KAUFFMAN, *Attorneys for Defendant.*

(Endorsed:) 140. Law. Ætna Life Insurance Company *vs.* Lyon County *et al.* Stipulation waiving jury. Filed Oct. 11, 1890. A. J. Van Duzee, clerk. J. H. Bolton, deputy.

18 And afterwards, to wit, on the 15th December, A. D. 1890, there was filed in the office of the clerk of said court an opinion by Shiras, judge, in said cause; which opinion is in the words and figures following, to wit:

In the United States Circuit Court in and for the Northern District of Iowa, Western Division, October Term, 1890.

THE ÆTNA LIFE INSURANCE COMPANY
vs.
LYON COUNTY.
} Law.

Action on Interest Coupons.

Cummins, Wright, Henderson, Hurd, Daniels & Kiesel, for plaintiff; Kauffman & Guernsey, Van Wagenen & McMillan, for defendant.

SHIRAS, *J.*:

The question of law arising on the foregoing facts have been very fully and ably presented by the counsel for the respective parties, and it is, perhaps, needless to say that there is a wide divergence in the views advanced touching the judgment that should be rendered by the court.

It clearly appears from the evidence that the plaintiff and other purchasers of the bonds issued by the defendant county in pursuance of the resolution adopted by the board of supervisors in April, 1884, bought the same in good faith and paid therefore the full face value and accrued interest, and that the amount thus received was applied by the county, through its refunding agent, to the payment of bonds then outstanding against the county.

It no less clearly appears that the issue of bonds negotiated by B. L. Richards on behalf of the county, being in amount $120,000, exceeded largely the constitutional limitation of five per cent. upon the valuation of the taxable property in the county as shown by the last preceeding State and county tax-lists.

If this issue of bonds had been negotiated in the purchase of property then acquired or for the erection of county buildings or other like purpose, so that thereby a new or original indebtedness had been thereby created against the county, there could then be no question that the bonds themselves would be void by reason of thee provision of the constitution of the State of Iowa limiting the indebtedness of all municipal and political corporations within the State to five per cent. upon the taxable valuation of the property within the limits of the particular corporation and a recovery thereon could not be had even in favor of parties who had paid full value therefore in the belief that the bonds were valid.

Buchanan *v.* Litchfield, 102 U. S., 278.
Dixon Co. *v.* Field, 111 U. S., 83.
Lake Co. *v.* Rollins, 130 U. S., 662.
Lake Co. *v.* Graham, 130 U. S., 674.

The bonds in question were not issued for any such purpose, but were issued for the purpose of refunding other outstanding bonds of the county, and the issuance thereof did not, in fact, increase the indebtedness of the county, but only changed the form or evidence of indebtedness.

19 Under these circumstances it is broadly claimed on behalf of plaintiff that the bonds being issued to refund or pay other bonds are not affected by the constitutional limitation.

To the extent of holding that as applied to a series of refunding bonds the mere fact that the amount thereof might exceed five per cent. of the then taxable valuation of the property within the county as shown by the tax-lists would not necessarily show that the bonds so issued were invalid, I can agree in the views of counsel for plaintiff.

If a county owes a valid and enforceable indebtedness, refunding bonds issued under authority of an act of the legislature for the

purpose of taking up such enforceable indebtedness are not invalid because they may exceed the five per cent. limitation.

In such case the refunding bonds are valid because they represent a valid indebtedness.

R. R. Co. *v.* County of Osceola, 45 Iowa, 168.
Austin *v.* District of Colony, 51 Iowa, 102.

In suits, therefore, upon refunding bonds representing prior indebtedness, it is necessary, in order to sustain the defense of invalidity, to show that the indebtedness merged in and represented by the refunding bonds was itself invalid and non-enforceable, either in whole or in part, and in the present case both parties have introduced evidence on this issue.

On behalf of plaintiff it is claimed that the representation made by B. L. Richards, the accredited agent of the county, to the effect that all the indebtedness proposed to be refunded by means of the issuance of the series of bonds which were negotiated by him to plaintiff and others had been reduced to judgment and then bonded estops the county from showing the contrary.

I do not think the statements made by Richards came within the principle contended for. When these bonds were offered to the plaintiff it was known to the parties acting for the plaintiff that the series of bonds proposed to be negotiated exceeded in amount five per cent. of the taxable property in the county, and, therefore, to authorize the issuance thereof there must be then in existance a valid indebtedness to the amount of $120,000 which it was proposed to refund by the issuance of the bonds in question.

The validity of the bonds was assented upon the claim that the bonds to be refunded represented claims that had been reduced to judgment and were therefore enforceable against the county.

The purchasers knew this and were bound to know that unless this assertion was true the bonds would be invalid because in excess of the constitutional limitation, and the purchasers were bound to ascertain what the fact in this particular was.

The bonds themselves contain no recital on the subject. The certified copy of the proceedings taken by the board of supervisors in regard to the issuance of the bonds, and which copy was submitted to the purchasers, does not contain any statement showing that the bonds proposed to be refunded were based wholly upon prior judgments.

The statement relied upon as an estoppel was made by Richards first orally and then in form of an affidavit; but he was not then acting on behalf of the county in ascertaining or certifying to a fact which the law required to be then ascertained and determined as the basis for further action.

He was the refunding agent of the county, but he did not have the power to determine any question or matter pertaining to the right to issue the bonds.

Dixon County *v.* Field, 111 U. S., 83.
Daviess County *v.* Dickinson, 117 U. S., 657.

The resolution of the board of supervisors appointing Richards declares the object of the appointment to be for the purpose of funding and refunding the county indebtedness, and the resolution adopted by the board under date of April 10, 1884, show upon their face that it was the purpose of the board to undertake the bonding of the floating indebtedness as well as the refunding the then outstanding bonded indebtedness.

Upon the question of what the bonds proposed to be refunded were the representative, and whether the same were based upon judgments previously rendered against the county, the records of the county constituted the primary and best evidence.

Richards had no charge over or connection with these records, nor was he the one to whom application would naturally be made by one seeking to know the origin and purpose of the outstanding bonded indebtedness of the county.

If the effect of an estoppel is given to statements of this character, the protection intended to be secured by the constitutional provision limiting the amount of indebtedness of counties and other municipal corporations would be wholly destroyed.

In every instance it could be evaded by the simple device of appointing a refunding agent and by his statements create an estoppel against the county or city, and thus validate any amount of bonds that might be issued.

I hold, therefore, that the representations made by Richards do not operate as an estoppel against the county, but that it is open to the county to show that the bonds merged into the refunding bonds sold by Richards were in whole or in part invalid and non-enforceable.

On behalf of the defendant it is argued that upon this issue of unconstitutionality it is open in this proceeding to question the validity of judgments against the county or of bonds issued to fund or pay judgments against the county.

In this claim I cannot concur.

The constitutional limitation is not self-acting. The protection of its provisions must be involved at the proper time and in the proper mode.

If judgments are obtained against a county and the same are not reversed, but remain in full force, they are evidence of the highest nature that the county owes the amounts adjudged to be due, and if the county, having the power to fund its outstanding indebtedness, issue bonds in payment of such judgments the validity of the bonds cannot be successfully attacked, when suit is brought thereon, by showing that if the defense had been interposed in the original case the claim might have been defeated and that the judgment actually rendered might have been prevented.

As is said by the Supreme Court in Cromwell *v.* Sac County, 94 U. S., 357: "Thus, for example, a judgment rendered upon a promissory note is conclusive as to the validity of the instrument and the amount due upon it, although it be subsequently alleged that perfect defenses actually existed of which no proof was offered, such as forgery, want of consideration, or payment.

21 If such defenses were not presented in the action and established by competent evidence the subsequent allegation of their existence is of no legal consequence. The judgment is as conclusive, so far as future proceedings at law are concerned, as though the defences never exci-ted."

The argument of counsel would have weight if the constitutional provision was to the effect that no judgment could be rendered against a county under any circumstances. In such case, even though a court should enter up a judgment, its unconstitutionality and invalidity would be self-apparent, and could always be availed of when its enforcement might be attempted, and this for the reason that upon its face the judgment would show. A defens3 based upon the clause that the court was without jurisdiction, limiting the amount of municipal indebtedness to five per cent. of the amount of taxable property, is of a wholly different nature. It requires a proper pleading of the facts, and upon the trial proper evidence must be introduced or else the defense fails.

It makes no difference in the validity of the judgment whether the defendant failed to plead the defense based upon the constitutional limitation or failed to sustain the defense, if pleaded, by sufficient evidence. In either case the rendition of the judgment establishes the validity of the claim against the county, and the judgment, so long as it remains unreversed, cannot be questioned on the ground that the amount thereof exceeds five per cent. of the taxable property in the county.

The evidence shows that when the bonds owned by plaintiff were issued and sold there was outstanding against the county bonds representing judgments and possibly other enforceable debts to an amount exceeding five per cent. of the taxable property in the county.

It follows that, to the extent of this enforceable indebtedness, the county could have issued valid refunding bonds. The amount of bonds issued and sold exceeds the amount of this enforceable indebtedness, and it may be said, therefore, that part of the indebtedness represented by this series of bonds is valid and enforceable and part not.

That the holders of these bonds have equities against the county will not be questioned.

The question is whether effect can be given thereto in this action.

It is argued that the bonds would be valid until the amount needed to refund the enforceable debt had been reached, and that it will be presumed that the bonds were sold in the order of their number.

Such a presumption cannot be indulged in under the facts of this case.

To settle the equities and rights of the bondholders against the county and their rights as between themselves would seem to require the institution of a suit in equity.

In this action at law between one owner of part of the bonds and the county it is beyond the power of the court to hear and determine the question of the order in which the series of bonds was

sold, of the application of the proceeds realized from the sale thereof, and whether the facts are such that a certain number of the bonds can be held valid at law or whether it should not be held that each owner of a bond is equitably entitled to demand his share of the total sum which may be adjudged to be collected from the county.

22 It seems to me that the only means of solving the difficulties of the situation is for the plaintiff and the other non-resident bondholders to unite in a proper proceeding in equity against the county and such other bondholders as may refuse to act as complainants, and in such suit it can be finally determined for what amount the county can be held liable and the rights of the respective bondholders in and to this sum can be decreed.

As the case now stands I hold that the facts show that the series of bonds issued by the county and negotiated by B. L. Richards as agent of the county represent in part bonds previously issued and which were enforceable against the county and in part bonds which were invalid and non-enforceable, but that in the present case at law and in the absence of interested parties it is impossible to determine what part or proportion of the coupons sued on belong to bonds that represent the valid indebtedness refunded therein.

Whilst the plaintiff has shown a right of recovery against the county for some amount, it has failed to show a legal right to recover on all the coupons sued on or any particular number thereof, and hence there is no basis for rendering a judgment at law in the present cause.

For this reason judgment herein must be in favor of defendant, such judgment, however, to be without prejudice to the right of plaintiff to establish in any other proper proceeding its right against the county growing out of the purchase by plaintiff of the bonds of the county.

23 Circuit Court of the United States in and for the Northern District of Iowa.

And afterwards, to wit, on the 13th day of February, A. D. 1891, there *was* filed in the office of the clerk of said court two bills of exceptions in said cause, one on part of plaintiffs and one on part of defendants; which bills of exceptions are in the words and figures following, to wit:

24 In the Circuit Court of the United States, Northern District of Iowa, Western Division.

ÆTNA LIFE INSURANCE COMPANY
vs.
THE COUNTY OF LYON, IN THE STATE OF IOWA. } Bill of Exceptions.

Be it remembered that on this 13 day of February, 1891, the above-entitled cause came on for trial before O. P. Shiras, one of the judges holding said court, a jury having been waived by the written

stipulation of the parties; and thereupon, the parties having introduced their testimony, the court now enters in said cause the following finding of fact, to wit:

25 In the United States Circuit Court in and for Northern District of Iowa, Western Division, October Term, 1890.

THE ÆTNA LIFE INSURANCE CO.
vs.
LYON COUNTY. } Law.

Action on Interest Coupons.

By consent of parties this case was tried to the court, and from the evidence submitted the court makes the following—

Finding of Facts.

1. This action is brought upon 410 interest coupons for $30.00 each, originally attached to certain negotiable bonds, duly executed by the defendant, The County of Lyon, on the 1st day of May, 1885, and thereafter negotiated and delivered to the purchasers thereof under the circumstances hereinafter stated, the said bonds being numbered as follows:

028 to 047, inclusive.
056 to 090, "
096 to 0120, "

2. The defendant, The County of Lyon, is a municipal corporation organized under the laws of the State of Iowa, within the meaning of section 3, article XI, of the constitution of the State of Iowa, and was so organized early in the year 1872.

3. The first State and county lists of the county were those for the year 1872, and the amount of the taxable property within the defendant county, as shown by the State and county tax-lists for the various years since the organization of the county, is as follows:

For the year	1872	$499,099 96
" "	1873	1,009,444 56
" "	1874	997,822 62
" "	1875	1,061,806 63
" "	1876	1,081,356 09
" "	1877	885,262 80
" "	1878	889,757 85
" "	1879	915,133 28
" "	1880	1,066,707 00
" "	1881	978,259 00
" "	1882	989,550 00
" "	1883	1,384,289 00
" "	1884	1,437,527 00
" "	1885	1,558,043 00

4. The first bonds issued by the county were issued July 29th, 1872. During the year commencing July 29th, 1872, and ending July 28th, 1873, the sum of fifty-five thousand dollars ($55,000) in bonds were issued by the defendant county under chapter 174 of

the Acts of the 14th General Assembly of Iowa upon and in payment and satisfaction of the following judgments in the following amounts at the date- given below:

26	On Wilson & Joy judgment, dated July 18, 1872, $6,018.00, 8 bonds, dated July 29, 1872, amounting to	$6,000
	On Jas. H. Wagner judgment, dated July 18, 1872, for $1,269.96, 3 bonds, dated July 29th, 1872, amounting to	1,200
	On John A. Schmidt judgment, dated Oct. 11, 1872, for $6,001.50, 10 bonds, dated Oct. 14, 1872, amounting to.	6,000
	On J. P. Gilman judgment, dated Oct. 11, 1872, for $402.28, 4 bonds, dated Oct. 14, 1872, amounting to..	400
	On E. W. Lewis judgment, dated Oct. 11, 1872, for $1,528.40, 3 bonds, dated Oct. 14, 1872, amounting to.	1,500
	On A. G. Case	
	On Wm. Larrabee judgment, dated Oct. 11, 1872, for $1,840.34, 5 bonds, dated Nov. 12, amounting to	1,800
	On Joy & Wright judgment, dated Oct. 11, 1872, for $743.10, 3 bonds, dated Jan. 6, 1873, amounting to...	700
	On Wm. Larrabee, dated Apr. 18, 1873, for $2,266.74, 4 bonds, dated Apr. 19, 1873, amounting to	2,200
	On C. E. Gortz	
	On Thos. Thorson judgment, dated Apr. 18, 1873, for $809.94, 4 bonds, dated Apr. 21, 1873, amounting to..	800
	On J. P. Gilman judgment, dated Apr. 18, 1873, for $499.20, 1 bond, dated Apr. 21, 1873, amounting to..	500
	On C. A. Greely judgment, dated Apr. 18, 1873, for $5,411.30, 7 bonds, dated Apr. 22, 1873, amounting to.	5,400
	On Clark & Grant judgment, dated Apr. 18, 1873, for $8,197.70, 14 bonds, dated Apr. 22, 1873, amounting to	8,200
	On Van Sickle & Bro. judgment, dated Apr. 18, 1873, for 1,268.70, 2 bonds, dated Apr. 22, 1873, amounting to.	1,200
	On Jas. H. Wagner judgment, dated Apr., 1872, for $892.55, 4 bonds, dated May 5, 1873, amounting to...	900
	On J. C. Buchanan judgment, dated Apr. 18, 1873, for $1,210.24, 4 bonds, dated May 5, 1873, amounting to.	1,200
	On E. W. Lewis judgment, dated July 23, 1873, for $2,414 30, 7 bonds, dated July 28, 1873, amounting to.	2,400
	On P. H. Parsons judgment, dated July 23, 1873, for $2,897.89, 4 bonds, dated July 28, 1873, amounting to.	3,000
	On Geo. W. McQueen judgment, dated July 23, 1873, for $4,326.95, 7 bonds, dated July 28, 1873, amounting to.	4,300
	On C. L. Wright judgment, dated July 23, 1873, for $505.37, 1 bond, dated July 28, 1873, amounting to..	500
	Om C. A. Greely judgment, dated July 24, 1873, for $6,754.66, 18 bonds, dated July 28, 1873, amounting to	6,800
	Total	$55,000 00

The last above judgment, being against the defendant and in favor of C. A. Greely, for the sum of $6,754.66, rendered on July 24, 1873, was rendered, bonded, and reversed under the following circumstances:

C. A. Greely brought a suit against the defendant county in the district court of Plymouth county, Iowa, for the sum for which judgment was entered, to wit, the aforesaid sum of sixty-seven hundred and fifty-four dollars and sixty-six cents ($6,754.66).

In this suit one F. W. Allen, a citizen and tax-payer of Lyon county, appeared and filed his petition of intervention prior to the rendition of judgment against the county, claiming and alleging that he was a citizen and tax-payer in the defendant county; that a great portion of the warrants sued on in the suit in which the petition of intervention was filed were fraudulent and without consideration; that at the time they were issued the indebted-
27 ness of Lyon county exceeded the amount of five per centum of the taxable property of said county, and that the warrants upon which the suit was based were in excess of such limitation of indebtedness and void. The petition of intervention further alleges that the board of supervisors of the county well knew that there was a good and valid defence to said warrants, and that the defendant county was not liable thereon, and that the warrants were fra-dulent, and that knowing these facts they corruptly and fraudulently entered into an arrangement assisting the plaintiff in procuring a judgment against the said county upon the said warrants, and entered into a conspiracy with the plaintiff to have a judgment taken upon the same and to prevent a full and impartial defence being made by the defendant county.

The plaintiff and defendant county each moved to strike this petition of intervention from the files on the ground that the tax-payer had no right of intervention or to defend for the county.

The court in Plymouth county sustained these motions to strike and at the same time entered judgment against the defendant county in favor of the plaintiff for the full amount claimed. From this judgment and these orders the intervenor appealed and the supreme court of the State of Iowa, on Dec. 9th, 1874, reversed the judgment of the court below rendered against the county and remanded the same for further proceedings.

Thereafter and on the 5th day of February, 1875, the case was transferred to Lyon county on motion of the intervenor, where it was continued from term to term and not disposed of, and no other judgment was entered therein. The judgment above referred to and which was reversed by the supreme court was entered against the county on the 24th of July, 1873. On the 28th day of that month a transcript of the judgment was filed in Lyon county, and on the same day bonds were issued thereon in the sum of $6,800. The total amount of bonds issued upon the judgments, not including the last judgment above referred to, was forty-eight thousand and two hundred dollars ($48,200), and including the judgment above referred to there were issued an aggregate of fifty-five thousand dollars ($55,000).

4½. I further find that the board of supervisors of Lyon county on the 16th day of April, 1873, passed a resolution in the following form, to wit:

"Whereas there is now considerable outstanding indebtedness of the county of Lyon, in the shape of county warrants; and whereas the time for putting into judgment and bonding the same, as provided by law, will expire on the first day of September, 1873; and whereas it is the opinion of the board of supervisors of Lyon county, Iowa, that the best interest of said county will be subserved by said indebtedness being bonded in accordance with law:

Now, therefor-, be it resolved and it is hereby moved and carried by a majority of said board convened, as by law provided, That the holders thereof be, and hereby are, authorized and empowered to bring suit upon the same in any court in this judicial district and obtain judgment on the same for the purpose of bonding: Provided, however, that J. F. Eccelson and H. R. Wilson are hereby employed as sole attorneys to appear in any court of this judicial district and defend said county against all such warrants wherein the consideration thereof has failed or wherein there is no consideration."

5. From July 28th, 1873, date of the issuance of the last of the $55,000 of bonds heretofore referred to, up to July 1st, 1879, funding bonds were issued by the defendant county under the 28 provisions of chapter 1, title 4, of the Code of Iowa for 1873, as amended by chapter IX of the Acts of the Sixteenth General Assembly and chapter 154 of the Acts of the Seventeenth General Assembly at various dates and in various amounts, as follows:

October 19th, 1874	$10,000 00
December 1st, 1874	6,000 00
February 16th, 1875	1,000 00
September 18th, 1875	5,100 00
October 18th, 1875	200 00
November 9th, 1875	400 00
September 6th, 1876	20,000 00
July 7th, 1877	3,600 00
February 7th, 1878	1,000 00
June 4th, 1878	5,200 00
February 19th, 1879	1,400 00
June 4th, 1879	1,400 00
Total	$55,300 00

All of the bonds were issued under the resolutions of the board of supervisors introduced in evidence and which showed the purpose for which the bonds were issued, such purpose being to fund outstanding warrants and floating indebtedness against the county.

6. I further find that on July 1st, 1879, the defendant county issued $100,000.00 of 8 % refunding bonds under the provisions of chapter 58 of the Acts of the Seventeenth General Assembly of the State of Iowa and upon the following resolution of the board of supervisors of said county of date April 3rd, 1878:

"Whereas, in accordance with an act of the 17th General Assembly of the State of Iowa authorizing counties, cities, and towns to refund outstanding bonded indebtedness at a lower rate of interest and to provide for the payment thereof—

"The board of supervisors of Lyon county, Iowa, in regular session assembled deem it for the public interest to refund all indebtedness of said county evidenced by bonds thereof heretofore issued and outstanding at the time of the passage of this act:

"Therefor- it is resolved by said board of supervisors, That the chairman of said board and the auditor of said county are hereby authorized and empowered to issue the coupon bonds of said county in sums not less than one hundred dollars nor more than one thousand ($1,000.00) dollars, having not more than fifteen years to run, redeemable in lawful money of the United States of America, at the pleasure of said county of Lyon, after five years from date of issue and bearing interest, payable semi-annually, at the rate of eight per centum per annum, which bonds shall be substantially in the form set forth in said bill, to wit, from lines eleven to twenty-nine, inclusive, and deliver the same to J. Shade, the treasurer of said Lyon county, Iowa, who is hereby authorized to sell and dispose of said bonds so issued in accordance with said act of the 17th Gen. Assembly of the State of Iowa and for no other purpose whatever.

"It is further resolved by the board of supervisors of said Lyon county, That two per centum be, and the same is hereby, appropriated of the bonds herein authorized to be issued to pay the costs or expense of preparing, issuing, advertising, and disposing of the same, and that J. Shade is hereby employed as financial agent therefor, with power to employ an assistant if he so desires, and that all matters herein set forth shall be done in strict conformity with this resolution and the provisions of said act."

"The foregoing was approved by all the members of the board of supervisors of Lyon county."

29 7. The foregoing resolution was spread upon the records and is upon page 337 of Book "A" of the records of the proceedings of the board of supervisors of said county, and the proceeds of this issue of Shade refunding bonds, amounting to $100,000.00, were used to pay the principal and interest of bonds issued prior thereto as follows:

The amount of $53,500.00 thereof was used to pay in full all of the $55,000.00 of judgment bonds heretofore referred to, and which were issued in 1872 and 1873 and which were outstanding and unpaid, being in amount $53,000.00 of principal and $500.00 of interets, including the whole of the $6,300.00 issued upon the judgment in favor of C. A. Greely, and which was reversed in the supreme court of Iowa, as hereinbefore found. The remainder of the proceeds arising from the sale of the issue of refunding bonds of $100,000.00, issued July 1st, 1879, and commonly known as the Shade bonds, were used to pay said above-mentioned $47,300 of funding bonds not issued upon, or to pay judgments, with accrued interest thereon, amounting to $1,085.00, hereinbefore referred to as

being issued between Oct. 19th, 1874, and Feb. 7, 1878, both dates inclusive.

8. I further find that the following additional judgments were entered against the defendant, Lyon County, at the dates and the amounts named, to wit:

E. T. Kirk, July 24, 1973	$2,204 23
James H. Wagner, April 21, 1874	672 06
A. J. Harmon, April 21, 1874	381 42
Perkins Bros., August 22, 1874	815 05
Wilson, Van Saum & Co., May 5th, 1875	3,850 34
Lyman J. Gage, Oct. 16, 1875	4,460 56
C. H. Smith, November 15, 1876	233 00
E. T. Drake, May 14, 1878	462 67
Swan & Fawcet, May 14, 1878	603 00
A. H. Andrews & Co., May 14, 1878	107 45
T. C. Thompson, May 14, 1878	304 00
Chase & Taylor, May 14, 1878	479 10

9. I further find that bonds had been issued to discharge these last-named judgments, which bonds in turn have been merged in or paid from the proceeds of later issues of bonds.

10. I find that there were no judgments rendered against the defendant county after the first of January, 1879, and that all judgments against the defendant county prior to that date had been satisfied prior to that date either by bonds, as hereinbefore found, warrants, or cash.

11. I find that the next bonds issued by the defendant county were issued on January 8th, 1880, and that on said date and at various dates subsequent thereto, up to and including July 1st, 1885, there were issued $60,600.00 of funding bonds under the provisions of chapter 1, title 4, of the Code for 1873, as amended by chapter 9 of the Acts of the Fifteenth Gen. Assembly,

Chapter 125 of the Acts of the Sixteenth Gen. Assembly,

Chapter 154 of the Acts of the Seventeenth Gen. Assembly,

Chapter 183 of the Acts of the Eighteenth Gen. Assembly,

Chapter 147 of the Acts of the Nineteenth Gen. Assembly,

Chapter 80 of the Acts of the Twentieth Gen. Assembly,

at dates and in amounts as follows:

January 8, 1880	$600 00
May 12, 1880	11,600 00
June 14, 1880	6,800 00
30 November 12, 1880	2,400 00
September 6, 1881	4,000 00
January 13, 1882	9,000 00
September 1st, 1884	3,100 00
March 1, 1885	3,100 00
July 1, 1885	20,000 00
Total	$60,600 00

12. I find that the whole amount of said bonds was issued and used for the purpose of taking up outstanding floating warrants against said county, and on the date of the issuance of the last $20,000.00 thereof, to wit, July 1, 1885, there was over $20,000.00 of warrants outstanding against said county which had been outstanding and unpaid more than six months prior to July 1st, 1885, said bonds being issued to take up said warrants under a resolution of the board of supervisors of said county, of date April 10th, 1884, as follows:

"Whereas the county of Lyon, State of Iowa, has a floating indebtedness in warrants of the different funds of said county; and whereas the board of supervisors of said county deem it for the best interest of the county to bond the same: Be it therefor- resolved by the board of supervisors of Lyon county, Iowa, that the chairman, with the auditor, be authorized to issue bonds in amounts sufficient to cover said indebtedness and deliver the same to the county treasurer and take his receipt therefor.

Adopted by a full vote of the board."

13. On May 1, 1885, an issue of $120,000.00 of refunding bonds *were* issued by the defendant county under the provisions of chapter 58 of the acts of the Nineteenth General Assembly and chapter 175 of the acts of the Twentieth General Assembly of the State of Iowa and under a resolution of the board of supervisors of said county, of date April 11, 1884, as follows:

"Whereas it is deemed to be for the public interest to refund the indebtedness of the county of Lyon, State of Iowa, evidenced by the bonds thereof heretofore issued and outstanding on the 1st day of Jan., 1884, and to issue the coupon bonds of county:

"It is therefor- resolved by the board of supervisors of said county in session assembled to issue the coupon bonds of this county in sums not less than one hundred nor more than one thousand dollars, having not more than twenty years to run, redeemable in lawful money of the United States of America, at the pleasure of the county, after five years from date thereof, and bearing interest, payable semi-annually, at six per cent. per annum, which bonds shall be substantially in the form given in section 1, chapter 58, 17th General Assembly, and shall bear date of July 1, 1884, or on first day of *of* any month called for by Miller & Thompson, and the chairman of the board and the auditor of this board and auditor of the county are hereby directed to issue same in accordance with said statute and this resolution.

"The foregoing preamble and resolution *was* passed the 11th day of April, 1884, by the vote of all the members of this board present, which was $\frac{4}{5}$ of all the members thereof."

14. That on the 9th day of January, 1885, the board of supervisors of the defendant, Lyon County, duly adopted the following resolutions:

"On motion, the resolution appointing Miller & Thompson as financial agents for funding and refunding county indebtedness and the contract entered into in such resolutions is hereby rescinded.

"On motion, it is hereby resolved by the board of super-
31 visors that B. L. Richards is hereby appointed financial agent for Lyon county for the purpose of funding and refunding county indebtedness, and that said B. L. Richards is required to give bond covering amount called for at any time by said agent. This resolution is passed in accordance with the laws of 1873 and the amendment thereto."

That under these resolutions the defendant county, on the 1st of May, 1885, duly executed one hundred and twenty refunding bonds in the sum of one thousand dollars each, numbered 01 to 0120, inclusive; that said bonds were identical in form and as follows:

UNITED STATES OF AMERICA.

Number 0106. Dollars 1,000.

State of Iowa, Lyon County.

The County of Lyon in the State of Iowa, for value received, promises to pay to Connecticut General Life Insurance Co., or order, at the office of the treasurer of said county of Rock Rapids, on the 1st day of May 1905 or at any time before that day after the expiration of five years at the pleasure of the county, the sum of one thousand dollars with interest at the rate of six per cent. per annum, payable at the office of the said treasurer, semi-annually on the first days of May and November in each year on presentation and surrender of the interest coupons hereto attached. This bond is issued by the board of supervisors of said county under the provisions of chapter 58 of the Session Laws of the Seventeenth General Assembly chapter 175 of Public Laws of the Twentieth General Assembly of the State of Iowa, and in conformity with a resolution of said board dated 10th day April 1884.

In testimony whereof, the said county by its board of
[SEAL.] supervisors has caused this bond to be signed by the chairman of the board and attested by the auditor with the county seal attached this first day of May 1885.

J. G. ANDERSON,
Chairman of the Board of Supervisors.
L. THOMPSON,
County Auditor.

(Endorsed on the back of the bond.)

Chapter LVIII.

An act to authorize counties, cities, and towns to refund outstanding bonded debt at a lower rate of interest and to provide for the payment of the same.

SECTION 1. Be it enacted by the General Assembly of the State of Iowa, That counties, cities, and towns are hereby authorized and empowered if by vote of two-thirds of the board of supervisors or city or town council (as the case may be) it be deemed for the public interest to refund the indebtedness of such corporation evidenced

by the bonds thereof heretofore issued and outstanding at the time of the passage of this act and to issue the coupon bonds of such corporation in sums not less than one hundred dollars nor more than one thousand dollars, having not more than twenty years to run, redeemable in lawful money of the United States of America, at the pleasure of such corporation, after five years from the date of their issue and bearing interest payable semi-annually at a rate not exceeding eight per cent. per annum, which bonds shall be substantially in the following form:

32 No. —.

The —— of —— in the State of Iowa, for value received promises to pay —— —— or order, at the office of the treasurer of said —— in —— on the first day of —— or at —— time before that date after the expiration of five years at the pleasure of said —— the sum of —— dollars with the interest at the rate of — per cent. per annum, payable at the office of said treasurer semi-annually on the first days of —— and in each year on presentation and surrender of the interest coupons hereto attached.

This bond is issued by the —— of said —— under the provisions of chapter — of the Session Laws of the Seventeenth General Assembly of Iowa, and in conformity with a resolution of said —— dated — day of —— 18—.

In testimony whereof the said —— has caused this bond to be (L. S.) signed by the —— and attested by the —— seal attached this — day of —— 18—.

And the interest coupons shall be in the following form:

$——.

The treasurer of —— Iowa, will pay to the holder hereof on the — day of —— 18— at his office in ——, —— dollars for interest on bond No. — issued under the provisions of chapter — of the Session Laws of the Seventeenth General Assembly.

33 SECTION 2. The treasurer or any such corporation is hereby authorized to sell and dispose of the bonds issued under this act at not less than their par value and to apply the proceeds thereof to the redemption of the outstanding bonded debt, or he may exchange said bonds for outstanding bonds par for par, but the bonds hereby authorized shall be issued for no other purpose whatever: Provided, however, such corporations may appropriate not to exceed two per centum of the bonds herein authorized to pay the expenses of preparing issuing and advertising and disposition of the same and may employ a financial agent therefor.

SECTION 3. The board of supervisors or common council of any city or town as the case may be, shall cause to be assessed and levied each year upon the taxable property of the county, city or town as the case may be, in addition to the levy authorized for other purposes, a sufficient sum to pay the interest on outstanding bonds issued in conformity with the provisions of this act accruing before the next annual levy.

And such proportion of the principal that at the end of eight years the sum raised from such levies shall at least equal fifteen per cent. of the amount of bonds issued; at the end of ten years at least thirty per cent. of the amount and at and before the date of the maturity of the bonds shall be equal to the whole amount of the principal and interest; and the money arising from such levies shall be known as the bond fund and shall be used for the payment of bonds and interest coupons and for no other purpose whatever, and the treasurer of such county, city or town shall open and keep in his books, a separate and special account thereof which shall at all times show the exact condition of said bond fund.

SECTION 4. Whenever the amount in the hands of the treasurer of any such county, city or town, belonging to the bond fund after setting aside the sum required to pay the interest coupons maturing before the next levy, is sufficient to redeem one or more bonds he may notify the owner of such bond or bonds that he is prepared to pay the same with all the interest accrued thereon, and if said bond or bonds are not presented for payment or redemption within thirty days after the date of such notice the interest on such bond shall cease and the amount due thereon shall be set aside for its payment whenever presented: Provided, however, that nothing herein shall be construed to mean that any such bond or bonds issued in accordance with this act shall be due or payable before the expiration of five years after its date of issue.

All redemption shall be made in the exact order of their issuance, beginning at the lowest or first number and the notice herein required shall be directed to the post-office address of the owner as shown by the record kept in the treasurer's office.

SECTION 5. If the board of supervisors of any county or the common council of any city or town which has issued bonds under the provisions of -his act, shall fail to make the levy necessary to pay such bond or interest coupons at maturity and the same shall have been presented to the treasurer of any such county, city or town, and payment thereof refused the owner may file the bond together with all unpaid coupons, with the auditor of the State taking his receipt therefor, and the same shall be registered in the auditor's office, and the executive council shall at their next session as a board of equalization and at each annual equalization thereafter, add to the State tax to be levied in said county, city or town a sufficient rate to realize the amount of principal or interest past due and to become due prior to the next levy and the same shall
34 be levied and collected as a part of the State tax and paid into the State treasury, and passed to the credit of such county, city or town as bond tax, and shall be paid by warrant as the payments mature to the holder of such obligations, as shown by the register in the office of the State auditor, until the same shall be fully satisfied and discharged. Provided that nothing in this act shall be construed to limit or postpone the right of any holder of any such bonds to resort to any other remedy which such holder otherwise might have.

SECTION 6. This act being deemed by the General Assembly of

immediate importance, shall take effect from and after its publication in the Iowa State Register and Iowa State Leader, newspapers published at Des Moines, Iowa.

Approved March 20, 1878.

CHAPTER CLXXV.

Acts Twentieth General Assembly.

An act to amend chapter 58, Acts of the Seventeenth General Assembly.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. That section one of chapter 58 Acts of Iowa the Seventeenth General Assembly be amended by striking out of the fifth and sixth lines the words "heretofore issued and outstanding at the time of the passage of this act" and insert in lieu thereof the words "now outstanding," and strike out the word "eight," in the twelfth line, and insert in lieu thereof the word "six."

SECTION 3. This act being deemed of immediate importance, shall take effect and be in force from the date of its publication in the Iowa State Register and Iowa State Leader, newspapers published in Des Moines.

15. I find that the proceeds arising from the sale of the $120,000.00 of refunding bonds issued May 1st, 1885, were used to take up the $100,000.00 of refunding bonds issued July 1st, 1879, and $16,900.00 of funding bonds issued June 4th, 1878, and subsequent thereto as follows:

Of issue of June 4th, 1878	$1,700 00
Of issue of February 19th, 1879	1,000 00
Of issue of June 4th, 1879	100 00
Of issue of May 12th, 1880	11,600 00
All of issue of June 12th, 1880	2,500 00
Total	$16,900 00

And also to pay the commission and expense of placing said bonds, amounting to $2,438.59, and the balance of the amount realized from the sale of said bonds, amounting to $661.41, was applied on the payment of accrued interest on the bonds taken up.

16. I find that five per cent. of the value of the taxable property within The County of Lyon, defendant, as ascertained by the State and county tax-lists for the several years since the organization of the county up to 1885, is as follows:

1872	$24,954·99
1873	50,472 22
1874	49,891 13
1875	53,090 33
1876	54,067 80
1877	44,263 14

1878		44,487 89
1879		45,756 66
1880		53,335 35
1881		48,912 95
1882		49,477 50
1883		69,214 45
	1884	71,876 35
35	1885	77,902 15

17. Of the issue of ($100,000) one hundred thousand dollars, bearing date July 1st, 1879, there is no testimony as to the order in which the bonds were sold upon the market.

Of the issue of one hundred and twenty thousand dollars ($120,000.00), of date May 1st, 1885, the testimony tends to show that they were sold at the date, and in the amounts, and of the numbers, and to the persons or corporations as follows, to wit:

June 1st, 1885, Nos. 01 to 027, to G. B. Provost.

June 4th, 1885, Nos. 048 to 052, to C. H. Eighmey.

June 6th, 1885, Nos. 053 to 055, to Dubuque Nat. bank.

Aug. 28, 1885, Nos. 056 to 090, to Ætna Life Ins. Co.

Sept. 1st, 1885, Nos. 091 to 095, U. S. National bank.

Sept. 1st, 1885, Nos. 096 to 0105, to Orient Fire Ins. Co.

Sept. 2nd, 1885, Nos. 0106 to 0110, to Conn. Gen. Life Insurance Co.

Sept. 8th, 1885, Nos. 028 to 047, to Saving & Trust Co. of Cleveland, Ohio.

Sept. 20th, 1885, Nos. 0111 to 0120, to Hartford Steam Boiler Inspection & Ins. Co.

18. I further find that the $20,000 of bonds issued July 1st, 1885, were sold on Sept. 3, 1885.

19. I further find that said B. L. Richards, as refunding and financial agent of the defendant county, at the time he sold said bonds numbered 028 to 047, inclusive, 056 to 090, inclusive, and 096 to 0120, inclusive, submitted to the purchaser the following statements, certificates, and affidavits as evidence of the validity of the bonds offered for sale.

The statements contained in the affidavit of B. L. Richards, sworn to under date of September 1st, 1885, were made orally in the first instance by him when seeking to make sale of the bonds, and subsequently were reduced to the form of an affidavit and sworn to under date of Sept. 1st, 1885.

"EXHIBIT J."

Certified Copy of the Proceedings of Board of Supervisors of Lyon County, Iowa, April 10th, 1884.

Bonding.—"Whereas the county of Lyon, State of Iowa, has a floating indebtedness in warrants on the different funds of said county, and whereas the board of supervisors of said county deem it for the best interest of the county to bond the same:

"Be it therefore resolved by this board of supervisors of Lyon county, Iowa, that the chairman, with the auditor, be authorized to issue bonds in amount sufficient to cover said indebtedness and deliver the same to the county treasurer and take his receipt therefor.

"Adopted by full vote of the board."

(Under our State law the bonds authorized to be issued by above resolution are optional 6 per cents, running ten years, with interest payable semi-annually at office of county treasurer.

(Signed) T. C. THOMPSON, *Auditor.*)

36 Refunding.—April 10, 1884.

"Whereas the county of Lyon, State of Iowa, has a bonded indebtedness consisting of 8 per cents; and whereas the board of supervisors of said county deem it for the best interest of the county to refund the said indebtedness: Be it therefore resolved that said board of supervisors receive and consider bids for that purpose and accept the best offer made for accomplishing said refunding.

"Adopted.

"On motion, the bid for bonding of Miller & Thompson and refunding the county indebtedness was accepted."

January, 1885, session.

"JANUARY 9TH, 1885.

"On motion, the resolution appointing Miller & Thompson financial agents for funding and refunding the county indebtedness and the contract entered under such resolution is hereby rescinded.

"On motion, it is hereby resolved by the board of supervisors that B. L. Richards is hereby appointed as the financial agent for Lyon county for the purpose of funding and refunding the county indebtedness, and that said B. L. Richards is required to give a bond covering the amount called for at any time by said agent.

"This resolution is passed in accordance with the laws of (Code) 1873 and amendment thereto."

I hereby certify that the above and foregoing is a complete record of the proceedings of said board of supervisors of Lyon county, Iowa, touching the funding and refunding of the debt of Lyon county, Iowa, and that said B. L. Richards is the duly authorized financial agent of the county, with full authority to negotiate the bonds of the county.

[SEAL.] (Signed) T. C. THOMPSON,
County Auditor.

I, T. C. Thompson, auditor of Lyon county, Iowa, hereby certify that the total bonded debt of Lyon county now outstanding is $140,000, represented by bonds of following dates, amounts, and rates of interest:

Refunding bonds.—July 1, '79, optional after July 1, '84, 8 %			100,000
Funding	—June 4, 1878, optional, 10 years,	8 %	2,400
	Feb. 19, 1879,	8 %	1,000
	June 4, 1878,	8 %	100
	May 12, 1880,	7 %	11,600
	June 1, 1880,	7 %	6,800
	Nov. 12, 1880,	7 %	2,400
	Sept. 6, 1881,	7 %	4,000
	June 13, 1882,	6 %	9,000
	Sept. 1, 1884,	6 %	3,100
			140,400

That there never has been default made in payment of any interest coupons on any of above bonds since they were issued, and provisions by levy for payment of interest has been made for 1885.

That the total amount of floating debt now outstanding is about $25,000 and does not exceed that amount.

That of the floating debt represented by county warrants there are:

37	Contingent-fund warrants	15,692
	Bridge-fund warrants	8,191
Poor-fund warrants		1,016
		24,899
Adding bonded indebtedness		140,400
Making total debt		$165,299

That the assessed valuation of the property of Lyon county, as taken from the assessment-rolls of 1884, — as follows:

357,021 acres at $4	1,428,084
Town lots	23,079
Personalty	72,330
Railroad	57,242
	1,580,755

That the land is assessed not to exceed one-third of its average value.

That town lots with the buildings thereon are worth, at a moderate valuation, $500,000.

That the personal property is valued at not more than one-tenth of its value.

The real value of the property would be listed as follows:

357,021 acres at $12 per acre	4,234,252
Town lots	500,000
Personalty	723,300
Railroad	57,242
Total real value	5,564,794

Rock Rapids, Iowa, March 9th, 1885.
(Signed) T. C. THOMPSON, *Auditor.* [SEAL.]

I, John G. Watkins, treasurer of Lyon county, Iowa, hereby certify that the bonds as listed by the county auditor, amounting to $140,400, are correct, and that the county is not in default in payment of interest on any of said bonds, and that provision for the year 1885 for payment of coupons has been made.

Signed Rock Rapids, March 9th, 1885.
(Signed) JOHN G. WATKINS,
Co. Treasurer, Lyon Co., Ia.

I, C. H. Smith, clerk of the district & circuit courts of Lyon county, Iowa, hereby certify that I am acquainted with T. C. Thompson, county auditor, and John G. Watkins, county treasurer, and know their signatures; that they are the present officers of Lyon county in auditor's and treasurer's offices, and that their signatures are attached to the foregoing certificates touching the debt of Lyon county, Iowa.

Dated Rock Rapids, Iowa, March 9th, 1885.
(Signed) CHAS. H. SMITH, [SEAL.]
Clerk of the District & Circuit Courts in & for Lyon County, Iowa.

Also Exhibit "L," which is as follows, to wit:

EXHIBIT "L."

McCeney & O'Donnell, attorneys-at-law.

DUBUQUE, IOWA, *August 26th*, 1885.

"We are asked our legal opinion as to the validity of the issue of $140,400 of refunding bonds by the county of Lyon, in this State.

38 "The certified copy of the record of the proceedings of the board of supervisors is not sufficient for us to determine several questions necessarily involved, viz: First. Whether the refunding resolution of April 10th, 1884, was adopted by the required two-thirds vote of the board of supervisors. Second. Whether these bonds evidence an indebtedness which was passed in judgment against the county. Assuming, however, from what Mr. Richards states that the above-named resolution was adopted by the same vote as the bonding resolution, and that the indebtedness of the county for which it is proposed to issue these bonds was merged in

and is now evidenced by a judgment against Lyon county, then we say that notwithstanding the fact that said amount of $140,400 was evidently in excess of the constitutional limitation upon counties not to contract indebtedness in excess of 5 per centum of the assessed valuation of their property, as shown by the last previous assessment, still the amount of the judgment or judgments, no matter if in excess of such 5 per centum, would be a valid obligation against the county and the judgment would forever bar the county from pleading the constitutional defence. The county, having had its day in court and full opportunity to plead the overissue of warrants or whatever may have been on the evidence of its debt, cannot again, whether it did before or not, be heard to make that defence again on any bond or other security given to pay such judgment. This is fully determined in the case of Sioux City & St. Paul R. R. Co. against Osceola Co., 45 Iowa, 168. In order to issue the bonds of a county to refund its bonded indebtedness under the authority of law all the action required is a vote, by resolution or otherwise, of the board of supervisors by a two-thirds majority declaring their intention so to do as they deem for the best interest of the county. Chapter 58, Act 17th General Assembly.

The two points above mentioned being conceded, viz., that the resolution authorizing the refunding was adopted by the required vote, and the legal presumption is that it was, and that the bonds are to refund judgment bonds, we give it as our opinion that the $140,400 of bonds are legal and binding upon the county of Lyon, no matter who may be the purchaser.

(Signed) McCENEY & O'DONNELL.

We mean to be understood by the above that the last issue of bonds to Lyon Co. to refund the refunding bonds which were issued to take up the judgment bonds are legal and binding upon the county.

(Signed) McCENEY & O'DONNELL.

Also Exhibit "M," which is as follows:

EXHIBIT M.

AUGUST 29, 1885.

To McCeney & O'Donnell, Dubuque, Iowa:

Judgments were obtained against Lyon county, Iowa, and judgment bonds were issued to satisfy same. Refunding bonds were issued to take up the judgment bonds. Refunding bonds, upon which your opinion was given, are issued to take up first-mentioned refunding bonds. Are last issued refunding bonds legal and binding obligations against the county?

(Signed) B. L. RICHARDS.

Also Exhibit "N," which is as follows:

Dated DUBUQUE, IOWA, *August* 30, 1885.

To B. L. Richards:

"Yes. Last issue, being authorized by law and to pay judgments, is legal and binding.

(Signed) McCENEY & O'DONNELL.

39 Also Exhibit "O," which is as follows:

STATE OF CONNECTICUT, } ss:
Hartford County, }

I, B. L. Richards, of Lyon county, Iowa, being duly sworn, on oath depose and say that I was present at the meeting of the board of supervisors of Lyon county, Iowa, held April 10th, 1884, and that the said meeting was a regular one; that at said meeting the resolution set forth in copy of proceedings of said board on file with Ætna Life Insurance Co. at Hartford was offered and adopted by the full vote of the board. No negative vote was cast.

I further depose that the refunding bonds of Lyon county, Iowa, were issued July 1st, 1879, for the purpose of taking up the outstanding judgment bonded indebtedness of said county, and the proceeds of said refunding issue were used for that that the refunding issue of May 1st, 1885, ~~$20,000~~, b to 0120, inclusive, are issued to take up the refunding July 1st, 1879.

(Signed) B. L. RICHARDS.

Subscribed & sworn to by B. L. Richards before me this 1st day of September, 1885.

CHARLES J. COLE,
Justice of the Peace.

I further find that the purchasers of the bonds from which the coupons sued on were detached at the time the sale thereof was negotiated knew that the issue of which the bonds offered for sale formed part was in an amount greater in the aggregate than five per cent. upon the total valuation of the taxable property of the county of Lyon, as shown by the State and county tax-lists of that and all preceding years, but that the purchasers bought them in the belief that they were valid and binding, and were so induced to believe by reason of the statement made to them by said B. L. Richards and the written documents submitted to them, as set forth in the last preceding finding, and that said purchasers, including the plaintiff, paid for said bonds of the issue of May 1st, 1885, par and accrued interest.

21. I find further that eighty of the coupons sued on matured on the 1st day of November, 1887; eighty on the 1st day of May, 1888; eighty on the first day of November, 1888; eighty on the 1st day of May, 1889; eighty on the 1st day of November, 1889, and ten on the 1st day of May, 1887; that the amount due upon the coupons in

suit is twelve thousand three hundred dollars, with interest upon said coupons at six per cent. from the respective dates of their maturity.

22. I find that the plaintiff is now and has till the date of the sale of the bonds to it been the full and beneficial owner of the coupens in suit, which were detached from bonds Nos. 056 to 090, inclusive, and as to the remaining coupons in suit plaintiff is the holder thereof, the legal title thereto being vested in it, although plaintiff is liable to account as agent or trustee for the proceeds realized therefrom to the parties who originally bought the bonds and who retain a beneficial interest in the proceeds realized.

40 And upon said findings the court enters judgment dismissing plaintiff's petition without prejudice, as therein provided, and against plaintiff for costs of this action; to which ruling plaintiff now duly excepts.

And forasmuch as the said findings of facts and the foregoing matters and things do not appear of record herein the plaintiff prays that this its bill of exceptions may be signed, and the said findings, matters, and things be made of record, which is accordingly done in open court, in the October term, 1890, thereof, this 13th day of February, 1891.

O. P. SHIRAS, *Judge.*

41 In the Circuit Court of the United States, Northern District of Iowa, Western Division.

ÆTNA LIFE INSURANCE COMPANY
vs.
THE COUNTY OF LYON, IN THE STATE OF IOWA. } Def't's Bill of Exceptions.

Be it remembered that the above-entitled cause came on for trial before O. P. Shiras, one of the judges holding said court, a jury having been waived by written stipulation of parties duly filed herein, and therefore, upon the trial of said cause; in the *cause* of the introduction of the evidence, the defendant, among other things, offered a certified copy of the record of the proceedings had in the State court, set forth in the answer, and tending to support the allegations thereof in respect to the adjudication therein pleaded; and also, in respect to the plea contained in said answer, as to the Orient Fire Insurance Company, of former action pending in the State court, said record so offered showed that on May 12th, 1887, a petition in equity was filed in the office of the clerk of the district court of Iowa in and for the county of Lyon, in which Anderson and other persons, citzens and tax-payers of said Lyon county, complained against Geo. W. Bowers, county treasurer; T. C. Thompson, auditor, and various members of the board of supervisors of said Lyon county, alleging the invalidity of the bonds from which the coupons in this sit were cut or detached, and alleging that they were issued in violation of the constitution of the State, and alleging that the county officers made defendant then and to said suit

would levy taxes to pay the interest and principal on said bonds, and praying for an injunction to restrain them from so doing; that process was served on said defendants, and that on the 11th day of May, 1887, a temporary writ of injunction was issued against the defendants as prayed. On October 4th, 1887, a decree was entered against Geo. W. Bowers, treasurer, defendant, restraining him from paying anything upon said bonds. Thereafter said cause was continued from term to term until June 16th, 1889, when leave was granted, on motion, to plaintiff to make parties defendant to said suit the following, among others: The Ætna Life Insurance Company of Hartford, Conn.; The Orient Fire Insurance Company, The Conn. General Life Insurance Company, The Hartford Steam Boiler Inspector Insurance Company, all of Hartford, Connecticut; The Savings & Trust Company of Cleveland, Ohio, and Geo. B. Provost, of Dubuque, Iowa. An amendment was accordingly filed on June 10th, 1889, making the above-named parties and corporations parties to said suit. The process designated as an original notice under the laws of Iowa was thereafter served upon the said defendants as follows, to wit:

On Geo. B. Provost by personal service in the State of Iowa, and upon the remaining corporations by personal service at Hartford, Connecticut, and Cleveland, Ohio, where said companys or corporations were located. The amendment to said petition alleged the invalidity of said bonds, and that said defendants were owners and holders thereof, and prayed for an injunction against said officers of the county enjoining them from levying taxes paying said bonds or interest thereon, and that said bonds be adjudged illegal and void as being in excess of the constitution-limitation of municipal indebtness. Geo. B. Provost and the Orient Fire Insurance Company appeared and made defense in said suit, and the same is yet undertimined as to them.

42

As to the remaining above-named defendants, default was taken against them for want of appearance or answer, and thereafter, to wit, on the 15th day of March, 1890, a decree was entered in said cause, a copy of which is attached to the answer of defendant in this suit.

The defendant also offered proof tending to show that the bonds from which the coupons in suit were cut belonged at the time of the institution of the said judicial proceedings and at the time of the rendition of the decree therein in the district court of the State of Iowa in and for Lyon county to the several corporations made defendants in said suit, and that the said coupons were not cut from the said bonds until after the said decree was entered. It further appeared by the said record so offered that service of notice of the said proceedings in the district court of the State of Iowa within and for Lyon county was served upon the various defendants holding said bonds in Connecticut and Ohio in the States where the said corporations were organized, and that said corporations were not served in the State of Iowa.

The court thereupon held that such proceedings had upon such service — of no validity and the decree therein not binding upon

the non-residents corporation- so served, it appearing that they did not appear in the said cause, and thereupon the court excluded the offer of the said record and evidence, to which ruling the defendant at the time excepted, and also held the plea in abatement as to Orient Fire Ins. Company bad.

And forasmuch as the said matters and things do not appear of record herein the defendant prays that this its bill of exceptions may be signed and the said rulings, matters, and things be made of record, which is accordingly done in open court, in the October term, 1890, thereof, this 13th day of February, 1891.

O. P. SHIRAS, *Judge.*

(Endorsed:) U. S. C. C., northern district of Iowa, western division. Ætna Life Insurance Company *vs.* Lyon County. Defendant's bill of exceptions. Filed February 13, 1891. A. J. Van Duzee, clerk.

43 And during the progress of said cause the following proceedings were had by said court in said cause and entered of record therein on the 9th, 10th, & 11th days of October, A. D. 1890, and the 13th day of February, A. D. 1891; which said record entries are in the following words and figures, to wit:

THE ÆTNA LIFE INSURANCE CO.
vs.
THE COUNTY OF LYON, IN THE STATE OF IOWA. } No. 140. Law.

And now, at this time, to wit, Oct. 9th, A. D. 1890, this cause coming on for trial, the plaintiff appears, by its attorneys, Henderson, Hurd, Daniels & Kiesel, and Cummins & Wright, and the defendant appears, by its attorneys, Van Wagenen & McMillian and Kauffman & Guernsey, and there came a jury of twelve good and lawful men, citizens of the district, to wit, Henry Bremner, A. Toberman, Henry Huntsinger, M. D. Comes, J. C. Hartman, C. W. Inman, C. L. Jones, B. W. Merwin, Edward Colvin, Don. B. Smith, R. R. Wilcox, Michael Scheel, who were duly empanelled and sworn to well and truly try the issue joined in this cause and a true verdict render according to the law and the evidence. After the impanelling of the jury, on application of counsel, parties are granted leave to amend their pleadings, and the further hearing of this cause is postponed until 9 o'clock a. m., Oct. 10th, 1890.

THE ÆTNA LIFE INSURANCE COMPANY
vs.
THE COUNTY OF LYON, IN THE STATE OF IOWA. } No. 140. Law.

And now, on this 10th day of October, 1890, the jurors and the attorneys all being present, the trial of this cause is resumed, and thereupon plaintiff files a demurrer to the first count in defendant's amended answer, and also at the same time plaintiff files a demurrer to the second count in defenda-t's amended answer; "which two demurrers, after argument of counsel, are submitted to the court;

whereupon court orders that said demurrers be overruled *pro forma*, granting leave to the parties to present the question raised by said demurrers on the introduction of evidence, and the same order also is made to apply to demurrer to plea as to Orient Insurance Company." At this time also defendant's demurrer to plaintiff's reply is duly submitted to the court, and thereupon, after the introduction of further evidence, the trial of this cause is postponed until 9 o'clock a. m., Oct. 11th, 1890.

THE ÆTNA LIFE INSURANCE CO.
vs.
THE COUNTY OF LYON, IN THE STATE OF IOWA. } No. 140. Law.

And now, on this 11th day of October, A. D. 1890, the jurors and the attorneys for the parties in interest all being present, the
44 trial of this cause is resumed and the introduction of the evidence is concluded, and thereupon the parties hereto, by written consent, waive their right of submission of the facts in controversy to the jury, and accordingly it is the order of court that the jurors in this cause be, and they are hereby, discharged from the further consideration of this cause, and this cause is submitted to the determination of the court, judgment herein to be entered as of this term of court, and by consent and agreement of parties it is the order of court that the arguments of counsel in this cause be heard at the next regular session of the United States circuit court at Des Moines, Iowa.

THE ÆTNA LIFE INSURANCE COMPANY
vs.
THE COUNTY OF LYON, IN THE STATE OF IOWA. } No. 140. Law.

Now, this 13th day of February, A. D. 1891, this cause coming up for trial, plaintiff appearing by Mess. Cummins & Wright & Henderson, Hurd, Daniels & Kiesel, and defendant appearing by Messers. Kauffman & Guernsey and Van Wagenen & McMillian, and the parties having, by written stipulation duly filed, waived a jury in the cause and consented that the issue of fact should be heard and determined by the court, thereupon the respective parties introduced the evidence adduced by them in support of the issue herein; and the court, having heard the argument of counsel and having duly considered the evidence, thereupon rendered its finding of facts in writing and caused the same to be duly filed and made part of the record of this cause; and thereupon the court doth adjudge, as matter of law based upon said finding of fact, that, whilst the plaintiff has shown a right of recovery for some amount against the defendant, it has failed to show a right to recover on all the coupons sued on or on any particular number thereof, and that the court cannot in the present proceeding at law render a judgment upon the merits of the controversy; wherefore it is further adjudged that the plaintiff take nothing by the present action, and that the defendant, The County of Lyon, in the State of Iowa, have judgment

against the Ætna Life Insurance Company for the costs herein, taxed at $152.53.

Such judgment, however, to be without prejudice to the right of plaintiff to establish in any other proper proceeding its right against the defendant growing out of the purchase by the plaintiff of the bonds issued by the defendant county and of the coupons thereto belonging and which are described and set forth in the pleadings herein.

Costs of trans. & ctfs., $28.70.

45 And afterwards, to wit, on the 23 day of May, A. D. 1891, there was filed in the office of the clerk of the United States courts in and for the northern district of Iowa an appeal bond in said cause; which bond is in the words and figures following, to wit:

Know all men by these presents that the Ætna Life Ins. Company, as principal, and T. A. Wilcox, as surety, are held and firmly bound unto the County of Lyon, in the State of Iowa, in the full and just sum of one thousand dollars, to be paid to the said County of Lyon, its successors or assigns; to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, by these presents, as witness our hands this 20 day of May, 1891.

Whereas lately, at a term of the circuit court of the United States for the northern district of Iowa, for western division, in a suit depending in said court between the said Ætna Life Insurance Company, as plaintiff, and the said County of Lyon, as defendant, judgment was rendered against said Ætna Life Insurance Company, and the said Ætna Life Insurance Company is suing out a writ of error to reverse the said judgment:

Now, the condition of the above obligation is such that if the said Ætna Life Insurance Company, the plaintiff in error, shall prosecute its writ to effect, and if it fail to make its plea good shall answer all costs, then the above obligation shall be void; otherwise of full force and virtue.

THE ÆTNA LIFE INSURANCE COMPANY,
By HENDERSON, HURD, DANIELS & KIESEL,
Its Attorneys.

T. A. WILCOX.

Security and bond approved.
O. P. SHIRAS, *Judge.*

STATE OF IOWA, *Dubuque County,* } ss:

I, the undersigned, being first duly sworn, on oath say that I am a surety in the within bond, and am a resident of the State, and am worth double the sum to be secured beyond the amount of my debts, and have property liable to execution in this State equal to the sum to be secured.

T. A. WILCOX.

Subscribed and sworn to before me, a notary public of said State in and for said county, this 22 day of May, 1891, as witness my official signature and seal.

[SEAL.] J. B. MOORE,
Notary Public.

(Endorsed:) No. 140. Law. Ætna Life Insurance Company *vs.* The County of Lyon, in the State of Iowa. Writ of error. Filed May 23, 1891. A. J. Van Duzee, clerk.

46 UNITED STATES OF AMERICA, } *ss:*
Northern District of Iowa, }

I, A. J. Van Duzee, clerk of the circuit court of the United States in and for the northern district of Iowa, do hereby certify that the foregoing is a full, true, and perfect transcript of the record and proceedings in the case of The Ætna Life Insurance Company *vs.* The County of Lyon, in the State of Iowa, defendant, as fully as the same remain on file and of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court, in said district, this 1st day of June, A. D. 1891.

[Seal Circuit Court U. S., Northern District of Iowa, Sioux City.]

A. J. VAN DUZEE, *Clerk.*
J. H. BOLTON, *D'p'ty.*

47 UNITED STATES OF AMERICA, *ss:*

The President of the United States to The County of Lyon, in the State of Iowa:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, on the twentieth day of June next, pursuant to a writ of error filed in the clerk's office of the United States circuit court for the northern district of Iowa, western division, wherein The Ætna Life Insurance Company is plaintiff in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, in said district, this twenty-third day of May, 1891.

O. P. SHIRAS, *Judge.*

Service of the above citation acknowledged this 26th day of May, A. D. 1891.

A. VAN WAGENEN &
B. R. KAUFFMAN &
KAUFFMAN & GUERNSEY,
Attorneys for the County of Lyon, in the State of Iowa, Defendant in Error.

[Endorsed:] Filed this 29 day of May, 1890. A. J. Van Duzee, clerk.

48 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the circuit court of the United States for the northern district of Iowa, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said circuit court, before you, between The Ætna Life Insurance Company, as plaintiff, and The County of Lyon, in the State of Iowa, as defendant, a manifest error hath happened, to the great damage of the said Ætna Life Insurance Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the twentieth day of June next, in the said Supreme Court, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the twenty-third day of May, A. D. 1891.

Seal Circuit Court U. S., Northern District of Iowa, Dubuque.

A. J. VAN DUZEE,
Clerk U. S. C. C., Northern District of Iowa.

Allowed.
O. P. SHIRAS, *Judge.*

[Endorsed:] Filed May 23, 1891. A. J. Van Duzee, clerk.

49 *Assignment of Errors.*

The Ætna Life Insurance Company comes now and says that in the record and proceedings, as also in the rendition of the judgment of a plea in the circuit court of the United States for the northern district of Iowa, western division, between the said Ætna Life Insurance Company as plaintiff and The County of Lyon, in the State of Iowa, as defendant, manifest error hath happened, to the great damage of the said Ætna Life Insurance Company, and in the following particulars, in and upon each of which the said Ætna Life Insurance Company assigns error, to wit:

50 1. In that portion of the opinion which was in the following language and in the conclusion therein stated, to wit: "If this issue of bonds had been negotiated in the purchase of property then acquired or for the erection of county buildings or other like purpose, so that thereby a new or original indebtedness had been thereby created against the county, there could then be no question

that the bonds themselves would be void by reason of the provisions of the constitution of the State of Iowa limiting the indebtedness of all municipal and political corporations within the State to five per cent. upon the taxable valuation of the property within the limits of the particular corporation, and a recovery thereon could not be had even in favor of parties who had paid full value therefor in the belief that the bonds were valid."

2. In that portion of the opinion which was in the following language and in the conclusion therein stated, to wit: "I do not think the statements made by Richards came within the principle contended for. When these bonds were offered to the plaintiff it was known to the parties acting for the plaintiff that the series of bonds proposed to be negotiated exceeded in amount five per cent. of the taxable property in the county, and therefore to authorize the issuance thereof there must be then in existence a valid indebtedness to the amount of $120,000, which it was proposed to
51 refund by the issuance of the bonds in question."

3. In that portion of the opinion which was in the following language and in the conclusion therein stated, to wit: "The purchasers knew and were bound to know that unless this assertion was true the bonds would be invalid, because in excess of the constitutional limitation, and the purchasers were bound to ascertain what the fact in this particular was."

4. In that portion of the opinion which was in the following language and in the conclusion therein stated, to wit: "The bonds themselves contain no recital on the subject."

5. In that portion of the opinion which was in the following language and in the conclusion therein stated, to wit: "The certified copy of the proceedings taken by the board of supervisors in regard to the issuance of the bonds, and which copy was submitted to the purchasers, does not contain any statement showing that the bonds proposed to be refunded were based wholly upon prior judgments."

52 6. In that portion of the opinion which was in the following language and in the conclusion therein stated, to wit: "The statement relied upon as an estoppel was made by Richards first orally and then in the form of an affidavit, but he was not then acting on behalf of the county in ascertaining or certifying to a fact which the law required to be then ascertained and determined as the basis for further action."

7. In that portion of the opinion which was in the following language and in the conclusion therein stated, to wit: "The resolution of the board of supervisors appointing Richards declares the object of the appointment to be for the purpose of funding and refunding the county indebtedness, and the resolution adopted by the board under date of April 10, 1884, show upon their face that it was the purpose of the board to undertake the bonding of the floating indebtedness as well as the refunding the then outstanding bonded indebtedness."

53 9. In that portion of the opinion which was in the following language and in the conclusion therein stated, to wit:

"Upon the question of what the bonds proposed to be refunded were the representative and whether the same were based upon judgments previously rendered against the county the records of the county constituted the primary and best evidence."

10. In that portion of the opinion which was in the following language and in the conclusion therein stated, to wit: "Richards had no charge over or connection with these records, nor was he the one to whom application would naturally be made by one seeking to know the origin and purpose of the outstanding bonded indebtedness of the county."

11. In that portion of the opinion which was in the following language and in the conclusion therein stated, to wit: "If the effect of an estoppel is given to statements of this character the protection intended to be secured by the constitutional provision limiting the amount of indebtedness of counties and other municipal corporations would be wholly destroyed."

54 12. In that portion of the opinion which was in the following language and in the conclusion therein stated, to wit: "In every instance it could be evaded by the simple device of appointing a refunding agent, and by his statements create an estoppel against the county or city and thus validate any amount of bonds that might be issued."

13. In that portion of the opinion which was in the following language and in the conclusion therein stated, to wit: "I hold, therefore, that the representations made by Richards do not operate as an estoppel against the county, but that it is open to the county to show that the bonds merged into the refunding bonds sold by Richards were in whole or in part invalid and non-enforceable."

14. In that portion of the opinion which was in the following language and in the conclusion therein stated, to wit: "The amount of bonds issued and sold exceeds the amount of this enforceable indebtedness, and it may be said, therefore, that part of the indebtedness represented by this series of bonds is valid and enforceable and part not."

55 15. In that portion of the opinion which was in the following language and in the conclusion therein stated, to wit: "Such a presumption cannot be indulged in under the facts of this case."

16. In that portion of the opinion which was in the following language and in the conclusion therein stated, to wit: "To settle the equities and rights of the bondholders against the county and their rights as between themselves would seem to require the institution of a suit in equity."

17. In that portion of the opinion which was in the following language and in the conclusion therein stated, to wit: "In this action at law between one owner of part of the bonds and the county it is beyond the power of the court to hear and determine the question of the order in which the series of bonds was sold, of the application of the proceeds realized from the sale thereof, and whether the facts are such that a certain number of the bonds can be held valid at law, or whether it should not be held that each owner of a

bond is equitably entitled to demand his share of the total sum which may be adjudged to be collected from the county."

56 18. In that portion of the opinion which was in the following language and in the conclusion therein stated, to wit: "It seems to me that the only means of solving the difficulties of the situation is for the plaintiff and the other non-resident bondholders to unite in a proper proceeding in equity against the county and such other bondholders as may refuse to act as complainants, and in such suit it can be finally determined for what amount the county can be held liable, and the rights of the respective bondholders in and to this sum can be decreed."

19. In that portion of the opinion which was in the following language and in the conclusion therein stated, to wit: "As the case now stands, I hold that the facts show that the series of bonds issued by the county and negotiated by B. L. Richards as agent of the county represent in part bonds previously issued and which were enforceable against the county and in part bonds which were invalid and non-enforceable, but that in the present case at law and in the absence of interested parties it is impossible to determine what part or proportion of the coupons sued on belong to bonds that represent the valid indebtedness refunded therein."

57 20. In that portion of the opinion which was in the following language and in the conclusion therein stated, to wit: "Whilst the plaintiff has shown a right of recovery against the county for some amount, it has failed to show a legal right to recover on all the coupons sued on or any particular number thereof, and hence there is no basis for rendering a judgment at law in the present cause."

21. In that portion of the opinion which was in the following language and in the conclusion therein stated, to wit: "For this reason judgment herein must be in favor of defendant."

22. In said opinion as a whole.

23. In entering judgment dismissing plaintiff's petition.

24. In allowing the bill of exceptions to defendant and in signing the same and in making the same and the matters and things therein stated of record.

25. In making the order of the 10th day of October, 1890, upon the demurrers.

58 26. In adjudging that plaintiff has failed to show a right to recover on all the coupons sued on or on any particular number thereof.

27. In adjudging that the court cannot in the present proceeding at law render a judgment upon the merits of the controversy.

28. In adjudging that the plaintiff take nothing by the present action, and that the defendant, The County of Lyon, in the State of Iowa, have judgment against the Ætna Life Insurance Company for the costs herein.

29. In rendering the judgment of the 13th day of February, A. D. 1891.

59 And the record and proceedings aforesaid, together with a prayer for reversal, are herewith presented to the Supreme

Court of the United States, with a writ of error sued out by the said Ætna Life Insurance Company to such effect; and the said Ætna Life Insurance Company prays that the errors may be considered and corrected and the judgment aforesaid reversed, annulled, and held for naught, and that the said Ætna Life Insurance Company may be restored to all things which it hath lost by occasion of the said judgment.

A. B. CUMMINS,
D. B. HENDERSON,
LOUIS G. HURD,
FRANCIS B. DANIELS,
Of Counsel for the Ætna Life Insurance Company, the Plaintiff in Error.

[Endorsed:] Filed May 23, 1891. A. J. Van Duzee, clerk.

60 *Prayer for Reversal.*

To the Supreme Court of the United States:

The Ætna Life Insurance Company comes now and says that in the record and proceedings, as also in the rendition of the judgment of a plea in the circuit court of the United States for the northern district of Iowa, western division, between the said Ætna Life Insurance Company, as plaintiff, and The County of Lyon, in the State of Iowa, as defendant, manifest error hath happened, to the great damage of the said Ætna Life Insurance Company, and the said Ætna Life Insurance Company hath thereupon sued out a writ of error that the record and proceedings may be sent to the Supreme Court of the United States, to the end that error may be corrected and full and speedy justice done: Now, therefore, the said Ætna Life Insurance Company, as plaintiff in error, humbly prays for the correction of such error and for reversal of said judgment; and thus will ever pray.

A. B. CUMMINS,
D. B. HENDERSON,
LOUIS G. HURD,
FRANCIS B. DANIELS,
Of Counsel for the Ætna Life Insurance Company, Plaintiff in Error.

[Endorsed:] Filed May 23, 1891. A. J. Van Duzee, clerk.

61 UNITED STATES OF AMERICA, *Northern District of Iowa,* } ss:

I, A. J. Van Duzee, clerk of the circuit of the United States in and for the northern district of Iowa, do hereby certify and return that the writ of error which is hereto attached was served and filed in my office on the 23rd day of May, A. D. 1891, and a copy thereof at the same time lodged in my office, an- I now return said writ of error and annexed thereto and hereto attached an authenticated

copy of the record of the cause mentioned in said writ and the following-named papers filed thereon, to wit, the assignment errors, the prayer for reversal, and the citation and proof of service thereof.

In witness whereof I have hereunto set my hand and affixed the seal of said court, in said district, the 1st day of June, A. D. 1891.

[Seal Circuit Court U. S., Northern District of Iowa, Sioux City.]

A. J. VAN DUZEE, *Clerk*,
By J. H. BOLTON, *D'p'ty*.

Endorsed on cover: Case No. 14,681. N. Iowa C. C. U. S. No. 196. The Ætna Life Insurance Company, plaintiff in error, *vs.* The County of Lyon, in the State of Iowa. Filed June 12, 1891.